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सं. 43]

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No. 43]

NEW DELHI, SATURDAY, OCTOBER 22, 1988/ASVINA 30, 1910

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Ministries of the Government of India (other than Statutory Orders and Notifications Issued by the
Ministry of Defence)

वित्त मंत्रालय
(राजस्व विभाग)

नई दिल्ली, 2 फरवरी, 1988

आयकर

का. आ. 3103.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (15) के उप-खंड (iv) की मद (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय एतद्द्वारा उक्त मद के प्रयोजनार्थ पावर फाइनेंस कॉर्पोरेशन लि. नई दिल्ली द्वारा जारी किए गए 10 वर्षीय 9 (कर-मुक्त) आरक्षित विमोच्य बंध-पत्रों को विनिर्दिष्ट करती है।

वर्षों कि उक्तमद के अंतर्गत लाभ केवल तभी अनुमत्त होगा जब ऐसे बंधपत्रों का धारक अपना नाम और धारिता उक्त निगम के पास पंजीकृत करवा लेगा।

[सं. 7746/फा.सं. 178/2/88-आ. क.(नि.-1)]

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 2nd February, 1988

(INCOME-TAX)

S.O. 3103.—In exercise of the powers conferred by item (h) of sub-clause (iv) of clause (15) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby specifies "10 years 9 per cent (Tax-free)

2544 GI/88—/

Secured Redeemable Bonds" issued by the Power Finance Corporation Limited, New Delhi for the purpose of the said item :

Provided that the benefit under the said item shall be admissible only if the holder of such bonds registers his name and the holding with the said corporation.

[No. 7746 (F. No. 178/2/88-IT(A1))]

नई दिल्ली, 28 जुलाई, 1988

(आयकर)

का. आ. 3104 :—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा उक्त उपखंड के प्रयोजनार्थ, "श्री राम वैकुण्ठ टैम्पल ट्रस्ट, पुष्कर (राजस्थान)" को करनिर्धारण वर्ष 1988-89 के लिए अधिमूर्चित करती है।

[सं. 8059/फा. सं. 197/203/87-आ.क.(नि.1)]

New Delhi, the 28th July, 1988

(INCOME-TAX)

S.O. 3104.—In exercise of the powers conferred by sub-clause (v) of clause (23C) of section 10 of the Income

(3833)

Tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Shree Rama Vaikunth Temple Trust, Pushkar (Rajasthan)" for the purpose of the said sub-clause for the assessment year 1988-89.

[No. 8059/F. No. 197/293/87-IT(A1)]

नई दिल्ली, 5 सितम्बर, 1988

(आय-कर)

का. आ. 3105.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 80-छ की उप-धारा (2) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उक्त धारा के प्रयोजनार्थ "एरुलमिगु स्वर्ण पुरीश्वरर स्वामी मन्दिर, सेम्बनार कौटिल" को तमिल नाडु राज्य में महत्वपूर्ण ऐतिहासिक स्थान के रूप में इस शर्त पर अधिसूचित करती है कि वह इस प्रयोजन के लिए पृथक् लेखा रखेगा और दान में प्राप्त राशि को वह केवल मन्दिर के मरम्मत कार्य के लिए ही प्रयोग करेगा।

[सं. 8096/फा. सं. 176/29/88-आ.क. (नि-1)]

आनंद किशोर, अवर सचिव

New Delhi, the 5th September, 1988

(INCOME-TAX)

S.O. 3105.—In exercise of the powers conferred by clause (b) of sub-section (2) of section 80C of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Arulmigu Swarna Pureeswarar Swamy Temple, Sembanar koi" to be a place of historical importance in the state of Tamil Nadu for the purpose of the said section on the condition that the temple will maintain separate books of accounts for the purpose and the donations received will be utilised exclusively for the renovation of the temple.

[No. 8096/F. No. 176/29/88-IT(A1)]

ANAND KISHORE, Under Secy.

नई दिल्ली, 1 सितम्बर, 1988

(आय-कर)

का. आ. 3106.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखंड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उक्त उपखंड के प्रयोजनार्थ, "श्री सनातन धरम सभा मन्दिर राम, नई दिल्ली" को कर-निर्धारण वर्ष 1986-87 से 1988-89 तक के लिए अधिसूचित करती है।

[सं. 8091 /फा.सं. 197/32/87-आ.क. (नि-1)]

New Delhi, the 1st September, 1988

(INCOME-TAX)

S.O. 3106.—In exercise of the powers conferred by sub-clause (v) of clause (23C) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Shri Sanatan Dharam Sabha Lakshmi Narain Temple Trust, New Delhi" for the purpose of the said sub-clause for the assessment years 1986-87 to 1988-89.

[No. 8091/F. No. 197/32/87-IT(A1)]

नई दिल्ली, 20 सितम्बर, 1988

(आय-कर)

का. आ. 3107.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखंड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उक्त उपखंड के प्रयोजनार्थ, "इंस्टीट्यूट ऑफ दि फ्रांसिस्कन मिशनरीज ऑफ मेरी सोसाइटी न. 9, कोयम्बटूर" को कर-निर्धारण वर्ष 1987-88 और 1988-89 तक के लिए अधिसूचित करती है।

[सं. 8107/फा. सं. 197/139/88-आ.क. (नि-1)]

दलीप सिंह, विशेष कार्य अधिकारी

New Delhi, the 20th September, 1988

(INCOME-TAX)

S.O. 3107.—In exercise of the powers conferred by sub-clause (v) of clause (23C) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Institute of the Franciscan Missionaries of Mary Society No. 9, Coimbatore" for the purpose of the said sub-clause for the assessment years 1987-88 and 1988-89.

[No. 8107/F. No. 197/139/88-IT(A1)]

DALIP SINGH, Officer on Special Duty

नई दिल्ली, 17 अक्तूबर, 1988

आदेश

का. आ. 3108.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशस्त्र किया गया है, उक्त उपधारा के अधीन आदेश की सं. 673/374/88-सी. शु. -VIII तारीख 30-9-88 यह निदेश देते हुए जारी किया था कि श्री मंदन लाल आनंद, सयुक्त गंगा राम आनंद, निवासी एफ 11 लाजपत नगर-3 नई दिल्ली को निरुद्ध कर लिया जाए और केन्द्रीय जेल, दिल्ली में अभिरक्षा में रखा जाए ताकि उसे माल की तस्करी करने में सहायता करने और तस्करी के माल को लाने-ले-जाने, छुपाने व रखने में लगे होने के अलावा तस्करी के माल का धन्धा करने से रोका जा सके। और

2. केन्द्रीय सरकार के इस यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त दिल्ली के समक्ष हाजिर हो।

[फा.सं. 673/374/88-सी. शु. -III]

एस. के. चौधरी, अवर सचिव

New Delhi, the 17th October, 1988

ORDER

S.O. 3108.—Whereas the Joint Secretary to the Government of India specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/374/88-Cus. VIII dated 30-9-88 under the said sub-section directing that Shri Madan Lal Anand, S/o Shri Ganga Ram Anand, H. No. F-11, Lajpat Nagar, New Delhi-3 be detained and kept in custody in the Central Jail, Tihar, New Delhi with a view to preventing him from abetting the smuggling of goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of power conferred by clause (b) of sub-section (1) of section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Delhi within 7 days of the publication of this order in the official Gazette.

[F. No. 673/374/88-Cus. VIII]

S. K. CHOWDHRY, Under Secy.

आर्थिक कार्य विभाग

(बैंकिंग प्रभाग)

नई दिल्ली, 22 सितम्बर, 1988

का. आ. 3109.—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा 2 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री के. अहमद को जिनकी धारा 11 की उपधारा (1) के तहत बीकानेर क्षेत्रीय ग्रामीण बैंक, बीकानेर के अध्यक्ष के रूप में नियुक्ति का तीन वर्ष की पहली अवधि 31-3-88 को समाप्त हो गयी है, 1-4-88 से प्रारंभ होकर 25-7-88 का समाप्त होने वाली अवधि के लिये उक्त बैंक का पुनः अध्यक्ष नियुक्त करती है।

[संख्या एफ. 2-14/88-आर.आर.बी.]

Department of Economic Affairs

(Banking Division)

New Delhi, the 22nd September, 1988

S.O. 3109.—In exercise of the powers conferred by sub-section (1) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby reappoints Shri K. Ahmed whose earlier tenure of three years appointment under sub-section (1) of section 11 had expired on 31-3-88 as the Chairman of Bikaner Kshetriya Gramin Bank, Bikaner for a further period commencing from 1-4-88 and ending with 25-7-88.

[No. F. 2-14/88-RRB]

का.आ. 3110.—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा

श्री आनन्द स्वरूप को बीकानेर क्षेत्रीय ग्रामीण बैंक बीकानेर का अध्यक्ष नियुक्त करती है तथा 26-7-88 से प्रारंभ होकर 31-7-91 का समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है जिसके दौरान श्री स्वरूप अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ. 2-14/88-आर.आर.बी.]

S.O. 3110.—In exercise of the powers conferred by sub-section (1) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri Anand Swaroop as the Chairman of the Bikaner Kshetriya Gramin Bank, Bikaner and specifies the period commencing on the 26-7-88 and ending with the 31-7-91 as the period for which Shri Swaroop shall hold office as Chairman.

[No. F. 2-14/88-RRB]

का.आ. 3111.—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 31) की धारा 11 की उपधारा 2 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार श्री बी. कोथन्दरम को जिनकी धारा 11 की उपधारा (1) तहत कल्पतरु ग्रामीण बैंक, तुमकुर के अध्यक्ष के रूप में नियुक्ति की तीन वर्ष की पहली अवधि 31-5-88 का समाप्त हो गयी है, 1-6-88 से प्रारंभ होकर 3-9-88 को समाप्त होने वाली अवधि के लिये उक्त बैंक का पुनः अध्यक्ष नियुक्त करती है।

[संख्या एफ. 2-21/88-आर.आर.बी.]

S.O. 3111.—In exercise of the powers conferred by sub-section (2) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby reappoints Shri B. Kothandaram whose earlier tenure of three years appointment under sub-section (1) of section 11 had expired on 31-5-88 as the Chairman of Kalpatharu Gramina Bank, Tumkur for a further period commencing from 1-6-88 and ending with 3-9-88.

[No. F. 2-21/88-RRB]

का.आ. 3112.—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री एन. के. नवरत्न को कल्पतरु ग्रामीण बैंक तुमकुर का अध्यक्ष नियुक्त करती है तथा 4-9-88 से प्रारंभ होकर 30-9-91 का समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है जिसके दौरान श्री नवरत्न अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ. 2-21/88-आर.आर.बी.]

S.O. 3112.—In exercise of the powers conferred by sub-section (1) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri N. K. Navarathna as the Chairman of the Kalpatharu Gramina Bank, Tumkur and specifies the period commencing on the 4-9-88 and ending with the 30-9-91 as the period for which Shri Navarathna shall hold office as Chairman.

[No. F. 2-21/88-RRB]

नई दिल्ली, 27 सितम्बर, 1988

का. आ. 3113.—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 11) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा श्री टी. के. श्रीनिवासन को कावेरी ग्रामीण बैंक, मैसूर का अध्यक्ष नियुक्त करती है तथा 4-8-88 से प्रारम्भ होकर 31-8-91 का समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है, जिसके दौरान श्री श्रीनिवासन अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ. 2-27/88-आर.आर.बी.]

New Delhi, the 27th September, 1988

S.O. 3113.—In exercise of the powers conferred by sub-section (1) of Section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri T. K. Srinivasan as the Chairman of the Cauvery Grammeena Bank, Mysore and specifies the period commencing on the 4-8-88 and ending with the 31-8-91 as the period for which Shri Srinivasan shall hold office as Chairman.

[No. F. 2-27/88-RRB]

का. आ. 3114.—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 21) की धारा 11 की उपधारा 2 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री टी. के. गुप्ता को जिनकी धारा 11 की उपधारा (1) के तहत मे बाड़ आंचलिक ग्रामीण बैंक, उदयपुर के अध्यक्ष के रूप में नियुक्ति का पांच वर्ष की पहली अवधि 31-1-88 को समाप्त हो गई है, 1-2-88 से प्रारम्भ होकर 6-9-88 को समाप्त होने वाली अवधि के लिए उक्त बैंक का पुनः अध्यक्ष नियुक्त करती है।

[संख्या एफ. 2-7/88-आर.आर.बी.]

S.O. 3114.—In exercise of the powers conferred by sub-section (2) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby reappoints Shri T. K. Gupta whose earlier tenure of five years appointment under sub-section (1) of section 11 had expired on 31-1-88 as the Chairman of Mewar Aanchalik Gramin Bank, Udaipur for a further period commencing from 1-2-88 and ending with 6-9-88.

[No. F. 2-7/88-RRB]

का. आ. 3115.—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा श्री सी. पी. अग्रवाल को मे बाड़ आंचलिक ग्रामीण बैंक, उदयपुर का अध्यक्ष नियुक्त करती है तथा 7-9-88 से प्रारम्भ होकर 31-9-91 का समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है जिसके दौरान श्री अग्रवाल अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ. 2-7/88-आर.आर.बी.]

S.O. 3115.—In exercise of the powers conferred by sub-section (1) of Section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri C. P. Agrawal as the Chairman of the Mewar Aanchalik Gramin Bank, Udaipur and specifies the period commencing on the 7-9-88 and ending with the 31-9-91 as the period for which Shri Agrawal shall hold office as Chairman.

[No. F. 2-7/88-RRB]

का. आ. 3116.—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा श्री यू. एस. एन. मूर्ति को श्रीराम ग्रामीण बैंक, निजामाबाद का अध्यक्ष नियुक्त करती है तथा 30-8-88 से प्रारम्भ होकर 31-8-91 को समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है जिसके दौरान श्री मूर्ति अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ. 2-2/88-आर.आर.बी.]

S.O. 3116.—In exercise of the powers conferred by sub-section (1) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri U.S.N. Murthy as the Chairman of the Srirama Grammeena Bank, Nizamabad and specifies the period commencing on the 30-8-88 and ending with the 31-8-91 as the period for which Shri Murthy shall hold office as Chairman.

[No. F. 2-2/88-RRB]

का. आ. 3116.—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा श्री एस. के. मेंदिरत्ता को बस्तर क्षेत्रीय ग्रामीण बैंक, जगदलपुर का अध्यक्ष नियुक्त करती है तथा 30-7-88 से प्रारम्भ होकर 31-7-91 को समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है जिसके दौरान श्री मेंदिरत्ता अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ. 2-24/87-आर.आर.बी.]

बी. बी. माथुर, अवसर सचिव

S.O. 3117.—In exercise of the powers conferred by sub-section (1) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri S. K. Mendiratta, as the Chairman of the Baster Kshetriya Gramin Bank, Jagdalpur and specifies the period commencing on the 30-7-88 and ending with the 31-7-91 as the period for which Shri Mendiratta shall hold office as Chairman.

[No. F. 2-24/87-RRB]

V. B. MATUR, Under Secy.

नई दिल्ली, 4 अक्टूबर, 1988

का. आ. 3118.—भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) के खंड (क) और उपधारा (2) के अनुसरण में, केन्द्रीय सरकार, एतद्वारा श्री एस. एस. नाडकर्णी को 19 सितम्बर, 1988 से शुरु होने वाली और 18 सितम्बर, 1993 को समाप्त होने वाली अवधि के लिए भारतीय औद्योगिक विकास बैंक का पुनः प्रबंध निदेशक नियुक्त करती है।

[सं. एफ. 9/48/88-बी. ओ. (1)]

New Delhi, the 4th October, 1988

S.O. 3118.—In pursuance of clause (a) of sub-section (1) and of Sub-Section (2) of section 6 of the Industrial Development Bank of India Act, 1964 (18 of 1964), the Central Government hereby reappoints Shri S. S. Nadkarni as the Managing Director of the Industrial Development Bank of India for a period commencing on 19th September, 1988 and ending with 18th September, 1983.

[No. F. 9/48/88-BO. 1(1)]

का.आ. 3119.—भारतीय औद्योगिक विकास बैंक, अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) खण्ड (क) के अनुसरण में केन्द्रीय सरकार, एतद्वारा श्री एस.एस. नाडकर्णी को जिन्हें 19 सितम्बर, 1988 से भारतीय औद्योगिक विकास बैंक का पुनः प्रबंध निदेशक नियुक्त किया गया है, उसी तारीख से भारतीय औद्योगिक विकास बैंक के निदेशक मण्डल का अध्यक्ष नियुक्त करती है।

[सं. एफ. 9/48/88-बी.ओ. 1(2)]

एस.एस. हसूरकार, निदेशक

S.O. 3119.—In pursuance of clause (a) of sub-section (1) of section 6 of the Industrial Development Bank of India Act, 1964 (18 of 1964), the Central Government hereby appoints Shri S. S. Nadkarni, who has been re-appointed as the Managing Director of the Industrial Development Bank of India, with effect from 19th September, 1988 to be the Chairman of the Board of Directors of the Industrial Development Bank of India with effect from the same date.

[No. F. 9/48/88-BO. 1(2)]

S. S. HASURKAR, Director

उद्योग मंत्रालय

(औद्योगिक विकास विभाग)

नई दिल्ली, 14 अक्टूबर, 1988

आदेश

का.आ. 3120.—केन्द्रीय सरकार, विकास परिषद् (प्रक्रिया) नियम, 1952 के नियम 2, नियम 4 और नियम 5 के साथ पठित, उद्योग (विकास और विनियमन) अधिनियम, 1951 (1951 का 65) की धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के उद्योग मंत्रालय (औद्योगिक विकास विभाग) के आदेश सं. का. आ. 1396, तारीख 2 मई, 1988 का निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त आदेश में,—

- (i) क्रम सं. 21, 23 और 25 के सामने, विद्यमान प्रविष्टियों के स्थान पर क्रमशः निम्नलिखित रखा जाएगा, अर्थात् :—

"21. श्री एस. चन्द्रशेखरन,
निदेशक (यांत्रिक इंजीनियरी)
भारतीय मानक ब्यूरो,
9, अहमदुल्ला शाह जफर मार्ग,
नई दिल्ली

— सदस्य

23. श्री एस. जे. सिंह,

निदेशक मद्रास,

मद्रास निदेशालय,

शहरी विकास मंत्रालय,

नई दिल्ली

—सदस्य; और

25. डा. डी. आर. चावला,

औद्योगिक सलाहकार,

डी. जी. टी. डी. (आई. एम. वार्ड)

निदेशालय), नई दिल्ली — सदस्य सचिव"।

- (ii) अन्तिम पैरा में "श्री एस. के. बनर्जी" प्रविष्टि के स्थान पर "डा. डी. आर. चावला" प्रविष्टि रखी जाएगी।

[सं. 19(2)/87-कागज]

के.एस. मल्लिक, अवर सचिव

MINISTRY OF INDUSTRY

(Department of Industrial Development)

New Delhi, the 14th October, 1988

ORDER

S.O. 3120.—In exercise of the powers conferred by section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), read with rules 2, 4 and 5 of the Development Councils (Procedural) Rules, 1952, the Central Government hereby makes the following amendments in the Order of the Government of India in the Ministry of Industry (Department of Industrial Development No. S.O. 1396, dated the 2nd May, 1988, namely :—

In the said Order :

- (i) against S. Nos. 21, 23 and 25, for the existing entries, the following shall respectively be substituted, namely :—

"21. Shri S. Chandrasekharan,
Director (Mech. Engineering)
Bureau of Indian Standards,
9, Bahadur Shah Zafar Marg,
New Delhi. Member";

"23. Shri M. J. Singh,
Director of Printing,
Directorate of Printing,
Ministry of Urban Development,
New Delhi. Member"; and

"25. Dr. D. R. Chawla,
Industrial Adviser,
D.G.T.D. (IMY Dtc.),
New Delhi. Member-Secretary".

- (ii) in the concluding paragraph, for the entry "Shri M. K. Banerjee", the entry, "Dr. D. R. Chawla" shall be substituted.

[No. 19(2)/87-Paper]

K. S. MALLICK, Under Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 10 अक्टूबर, 1988

का. आ. 3121.—केन्द्रीय सरकार, भारतीय पशु-चिकित्सा परिषद् अधिनियम, 1984 (1984 का 52) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 15 अक्टूबर, 1988 को, उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के उपबंध उत्तर प्रदेश राज्य में प्रवृत्त होंगे।

[सं. 23-116/84-एन.डी.टी. (ए.एच.एस.)—जिल्द-2]
एस. वी. गिरि, अपर सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture & Cooperation)

New Delhi, the 10th October, 1988

S.O. 3121.—In exercise of the powers conferred by sub-section (3) of section 1 of the Indian Veterinary Council Act, 1984 (52 of 1984), the Central Government hereby appoints the fifteenth day of October, 1988, as the date on which the provisions of the said Act shall come into force in the State of Uttar Pradesh.

[No. 23-116/84-LDT(LHS) (Vol. II)]
S. V. GIRI, Additional Secy.

नागर विमानन तथा पर्यटन मंत्रालय

नई दिल्ली, 23 सितम्बर, 1988

का. आ. 3122.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के प्रयोग नियमावली, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, नागर विमानन तथा पर्यटन मंत्रालय के प्रशासनिक नियंत्रण में आने वाले निम्नलिखित कार्यालयों को, जिनके कर्मचारीवृन्द में हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

1. इंडियन एयरलाइंस

- (1) जोधपुर स्टेशन।
- (2) रायपुर स्टेशन।

[मंजूरा ई-11011/6/88-हिन्दी]
एस. गणेशपांडियन, निदेशक

MINISTRY OF CIVIL AVIATION & TOURISM

New Delhi, the 23rd September, 1988

NOTIFICATION

S.O. 3122.—In pursuance of Sub-rule (4) of rule 10 of the Official Languages (use for the official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Civil Aviation and Tourism, the staff of which have acquired the working knowledge of Hindi, namely :-

[No. E-11011/5/88-Hindi]
S. GANESPANDIAN, Director

श्रम मंत्रालय

नई दिल्ली, 4 अक्टूबर, 1988

का. आ. 3123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुद्रेमुख आयरन ओर कंपनी लि., बंगलौर के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती, जो केन्द्रीय सरकार को 26-9-88 को प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 4th October, 1988

S.O. 3123.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kudremukh Iron Ore Company Limited, Bangalore and their workmen, which was received by the Central Government on the 26th September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated, 20th September, 1988

Central Reference No. 77/87

I PARTY :

Shri R. Janardhana Staff No. 2736 Shops Department
M/s. Kudremukh Iron Ore Co. Ltd., Kudremukh-577142.

Vs.

II PARTY :

The General Manager (Production) Kudremukh Iron Ore Company Limited, Kerammangala, Block-II, Bangalore.

APPEARANCES :

For the I Party Shri D. Leelakrishnan, Advocate.

For the II Party Shri K. J. Shetty, Advocate.

AWARD

By exercising its powers under Section 10(1)(d) and (2A) of the I. D. Act, 1947, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its Order No. L-26012/18/86-D.III (B) dated 26th March, 1987.

POINT OF DISPUTE

"Whether the action of the Management of Kudremukh Iron Ore Company Limited, Bangalore in dismissing the services of Shri R. Janardhana is justified? If, not, to what relief the concerned workman is entitled?"

2. The I party workman has been filed his claim statement and inter alia has stated as follows.

He joined the service of the II party on 30th August 1979 as Electrician Grade I. He has been serving honestly and deligently. He found that the employees were being harassed and exploited by the II party. The Mineral Miners Union, which was then functioning was not effective. He decided along with other employees to strengthen the said union. He joined it with that view. He was selected as a member of the Executive Committee. His superior officer did not take it kindly. He was prejudiced to disassociate from the same, but he did not relent. He was transferred to auxiliary section in order to harass him. On account of concerted

action by himself and other office bearers, the management was issue to recognise the said union. In 1982, he was elected as the Joint Secretary. After the Kudremukh Employees Union was recognised by the II party in 1984, the management wanted the Mineral Miners Union to strengthen itself, so that Kudremukh Employees Union may be weakened. He was not willing to accede to the said anti labour policy. He did everything in his power to amalgamate Mineral Miners Union with Kudremukh Employees Union, under the leadership of Shri N. M. Adyanthaya. The II party was disappointed. In course of time, the amalgamation was achieved and he was elected as the Secretary of the Kudremukh Employees Union in 1985. Later, he was elected as the ad hoc committee member. On 3-9-85, a fatal accident was caused involving Shri Laxmikanth of Concentrator Plant on account of carelessness and callous attitude of the II party in not providing adequate safety and protective measures. The workers strongly protested against the said attitude of the management. The police were let loose and they committed atrocities on the workers. He played important role in the struggle of the workers for justice. The management was not happy. He was harassed and victimised. The management repeatedly issued memos, warnings and chargesheets on false, baseless, concocted charges. He was not given promotion. He was deliberately demoted to a lower grade. His increments were withheld. His grade was reduced by way of punishment. He was falsely implicated in criminal complaints and arrested on a number of occasions. Cases are still pending. He put up with all these acts of victimisation and harassment with a fond hope that good sense will prevail on the management. The management was waiting for an opportunity to get rid of him. The opportunity came on 9-11-85 when Shri K. L. Nagaraj of Crusher Department was involved in an accident due to the careless and callous attitude of the officers of the II party. When he came to know about the accident and that the workman had been taken to the hospital, he immediately rushed to the hospital and enquired about the conditions and the circumstances under which the accident had taken place. When Nagaraj was explaining to him the circumstances, Shri H. C. Muniraj, Senior Engineer of the Crusher Department was present by his side. He was not happy with the matter that he was enquiring with Nagaraj, since the worker had implicated him. As a union representative, he just asked Shri Muniraj as to why he is extracting work through a single workman in dangerous places without proper and adequate safety appliances. He further told him that precautions should be taken requested not to do so, at least in the future for the safety of the workers. For such a request Shri H. C. Muniraj got angry and in a very rash manner replied that whatsoever procedure was being followed, would continue and he was not interested in talking to the I party workman or taking instructions from him. Thereupon, the I party workman told him that he will take up the matter with higher authorities. Then he stayed with the said worker for about an hour and saw that he was given proper treatment. He telephoned to the Sub-Inspector of Police to come to the hospital and record complaint of Nagaraj. He came and recorded the complaint of Nagaraj and took statements of others. He also asked Shri K. Ramaprasad and Shri M. C. Muniraj to go over to the police station for further investigation. Then he left the place. Nothing happened thereafter. On 10-11-85 he took up the complaint of the said worker with the Divisional Superintendent and Chief Personnel Manager and explained to them about the irresponsible behaviour of Muniraj. The matter was discussed and settled amicably since the management agreed that they will not send a single workman to work in any dangerous place alone but will allot two workers on such a job. The said practice is continuing since then. Because of his said acts, Shri Muniraj was bent upon harming him. Perhaps, he has also made use of the officers of the II party for the said purpose. All of them hatched up a conspiracy. Shri Muniraj gave a false complaint to the General Manager on 11-11-85, alleging that he had abused and flogged him and attempted to assault Shri K. P. Bhat, Asst. Superintendent and had also abused Ramprasad the Engineer on 9-11-85. He falsely stated that the Sub-Inspector of Police came there and escorted them. Based on such false and baseless complaints, a chargesheet dated 13-11-85 was issued to him and he was placed under suspension. He gave his explanation denying the same. The management found it unsatisfactory. A farce of an enquiry was conducted as on empty formality,

to comply with the requirements of the standing orders. The Enquiry Committee did not provide him with full and adequate opportunity to disprove the charges. He was not given an opportunity to represent his case. The enquiry is vitiated. It was not fair and proper and opposed to principles of natural justice. That matter may be tried as a preliminary issue. The charges were not conclusively established against him. He had let in evidence to establish his innocence. The findings are not legal. He has been dismissed from service from 2-6-86. He was not given assistance to examine all his witnesses. He had given a representation to the Managing Director but with no avail. The enquiry was hustled through. He agreed to submit his written arguments. He was given time till 30-4-86. He requested for extension of time till 15-5-86. But no such opportunity was given to him. He had submitted his written arguments on 12-5-86 along with two documents. A copy of the written arguments submitted, by the Presenting Officer was not made available to him. The said procedure has affected his case. It appears that the Enquiry Committee has then given its findings. He has not been given a copy of the Enquiry report. He has been victimised for his trade union activities. The II party has indulged in unfair labour practice. He has been singled out for punishment. The action of the management is contrary to Articles 14 and 16 of the Constitution. The punishment imposed on him is highly excessive and shockingly disproportionate. An award may be passed that he may be reinstated with all the consequential benefits.

3. The II party management has filed its counter statement and inter alia it is stated as follows.

The contents of Paras 1, 2 and 3 are factually correct. He joined the II party on 30-8-1979 as Electrician Grade I. He was posted to work in the Shoppe Department. It is not correct that he has put in unblemished service or he has worked sincerely, honestly and diligently. Various chargesheets, memos, warning letters, punishments were given to him for committing various acts of misconduct. The details are shown in Annexure 'A'. It is not true that the employees were harassed. It is true that Mineral Miners' Union was existing at that time. The II party had accorded recognition to such union which had the majority support and which followed the code of discipline. It is incorrect that he took part to strengthen the union. The management is not aware about the role played by him or about the position he was holding. The question of ill-treating him does not arise. It is not true that the officers of the company persuaded him to disassociate from the union. Transfers are effected depending upon his job requirements. The transfer referred to by him is only a deployment from one section to another, in the same department and in the same building. The allegation that he was pressurised to leave the association is not true. The company is interested in making the best utilisation of the available manpower and does not get itself involved in the union activities of the employees. In September 1980, the recognition was given to Mineral Miners' Union. Kudremukh Employees Union was recognised in February 1982 on the recommendation of the Ministry of Labour, after due verification of its membership. The management of the II party and the Kudremukh Employees Union participated in joint forums and signed a long-term wage settlement and has settled various issues to their mutual satisfaction. The allegations made by the I party in regard to the said union are not true. He has made a false statement that he represents the said union and continues to hold the same position. There was a fatal accident on 3-9-1985 but the reasons attributed by him are not true. The Company provides safety appliances to its employees to take proper care. The workers of the company resorted to an illegal strike for about two months, resulting in loss of production. The contention that the police were let loose is false. The police are independent authorities, working under the State Government. Whenever there is law and order problem in the Kudremukh township, the police have taken action to maintain law and order. Disciplinary action was initiated against him strictly in accordance with the provisions of the Standing Orders. The allegation that he was harassed and victimised is false. Punishments were awarded for proved acts of misconduct. It is false that he has been implicated in criminal cases without any substance. An employee is considered for promotion, depending upon his performance, past record, conduct, job requirement and vacancy. Promotion cannot be claimed as a

matter of right. He was placed in the lower scale by way of punishment only after due enquiry for proved act of misconduct. The statements made by him regarding the incident of 9-11-85 have been enquired into by the Enquiry Committee and he has fully participated in the same. It is false that the management was looking for an opportunity to get rid of him. The allegations levelled against Shri Muniraj are false. Based on the complaints, a chargesheet was issued to him and he was placed under suspension. Explanation given by him was not satisfactory. An Enquiry Committee of two members was constituted. The allegation that the management conducted a farce of an enquiry is false. The committee conducted the enquiry in accordance with the principles of natural justice. The written augment given by him has been duly taken into account by the enquiry committee. The presenting officer did not submit any written arguments and hence there was no question of any copy being given to him. The allegations that the charges are not established is false. After taking into account all the aspects of the case and going through the enquiry proceedings, the disciplinary authority imposed the said punishment. He was dismissed from service on 2-6-1986, taking account the gravity of misconduct committed by him. The action taken against him is just and proper. There is no violation of Articles 14 and 16. It is not a fit case to invoke the provisions of Section 11-A of the I. D. Act. He has now raised a bogie that he has been victimised for his trade union activities. He has not exhausted all his remedies of redressal since no appeal has been filed by him. The action of the II party is fair proper and legal. The reference may be rejected.

4. In view of the said pleadings, the following additional issue was raised.

"Whether the II party proves that it has held a domestic enquiry in accordance with law?"

5. It was taken up as a preliminary issue.

6. The parties were called upon to adduce evidence on the same.

7. The II party management examined one witness and got marked Exs. M-1 to M-8.

8. Workman examined himself.

9. The parties were heard.

10. By a considered order dated 14-3-1986, this Tribunal has held that the II party management has conducted the domestic enquiry in accordance with the law. The parties were then called upon to adduce further evidence on rest of the points and argue.

11. On 13-4-1988, I.A.S. II, III and IV were filed by the I party. In I.A. III a prayer was made that the Sub-Inspector of Police, Law and Order, Kudremukh Police Station may be summoned to produce complaint/FIR dated 9-11-1985 filed by Muniraj against Janardhana. I.A. III has been rejected by this Tribunal, stating that the I party may obtain a certified copy of the F.I.R. from the court and obtain a certified copy of the F.I.R. from the court and produce the same. I.A. IV was allowed and the II party was called upon to produce the documents and it has been further stated that subject to proof and relevancy, the documents produced by the II party will be marked. On I.O. No. II, a considered order has been passed on 4-5-1988.

12. On 13-4-88, the I party workman was recalled at his instance and was examined further. On that day Exs. W-2 to W-25 were marked. On 2-6-88, the I party filed its documents. After 15-4-88, about five adjournments were given, such as 4-5-88, 2-6-88, 8-6-88 and 15-6-88. On 24-6-88, the I party examined himself further and Exs. W-26 to W-40 were marked. On 7-7-88, the I party workman has filed a memo, stating that he had filed an application with the Ministry of Labour for transfer of the case under Section 33-B of the I. D. Act and that the proceedings may be kept in abeyance. However, the matter had been adjourned to facilitate him to obtain an order of stay and it was made very clear to him that unless an order of stay is brought, the matter will not be stayed or kept in abeyance.

Since then, the matter has been again adjourned on 26-7-88 and 3-8-88. On 3-8-88, the I party has filed another memo stating that the matter may be kept in abeyance and orders are awaited in W.P. No. 8075/88. An considered order has been passed on 3-8-88 stating that there is no provision of law to keep the matter in abeyance and that however, a final opportunity was given to him and the matter was called on 10-8-88. On that day, neither the I party nor his counsel appeared, though the matter was called several times. The counsel for the II party produced a bunch of records stating that he had produced the same before the Hon'ble High Court of Karnataka and that there is a direction that he should produce the same before this Tribunal. He also produced a set of xerox copies of the same. However, in order to give one more chance, the matter was adjourned to 17-8-88. The I party workman had appeared at 12.10 p.m. and he was told that he may get his advocate and go on with the matter. Though the matter was kept by till 4.50 p.m. neither the workman nor his advocate appeared. The I party was called again. He was absent. He was placed ex-parte. The matter was adjourned for arguments of the II party to 22-8-88. On that day, the I party and his counsel were absent. The II party filed some 12 documents. However, the matter was kept by till 4 p.m. Since there was no representation from the I party, arguments of the II party have been heard and the matter had been reserved for award. Till today there is no representation from the I party.

13. My findings on the point of reference is as follows.

The action of the Management of Kudremukh Iron Ore Company Limited, Bangalore in dismissing Shri R. Janardhana is justified. He is not entitled to any relief.

REASONS

14. In para 12, page 10 of the claim statement, it has been contended that the II party management miserably failed to establish the charges and that the so called findings of the Enquiry Committee appeared to have been given to suit the requirements of the II party. Thus, it is one of the contentions of the I party workman that the findings are not sustainable.

15. The test of perversity of findings is two-fold. The first test is whether the findings are supported by any legal evidence at all. The second test is whether on the basis of the material placed on record any reasonable person could have arrived at the findings complained of. The findings of the Enquiry Committee are to be found at pages 190 to 229 marked as Ex. M-7. Before the Enquiry Committee, three witnesses were examined and they are PW-1 Shri M. C. Muniraj, Senior Engineer, PW-2 Shri K. P. Bhat, Assistant Superintendent and PW-3 Shri K. Ramaprasad, Engineer II. The proceedings of the enquiry are at Ex. M-5 from page 1 to 189. The documents marked in the enquiry have been shown by the enquiry committee as Exs. 1 to Ex. 31. Neither in the claim statement nor in his evidence the I party workman has contended that the oral evidence of all the three management witnesses or any documents out of Ex. 1 to 31 was evidence which was not legally admissible and therefore the findings are perverse. Thus, a finding emerge that it is not a case wherein the findings are based on no evidence at all.

16. The commentary of perversity in the Law of Industrial Disputes by O. P. Malhotra, Fourth Edition Volume 2 pages 874 to 877 shows that the Industrial Tribunal would not be justified in characterising the finding recorded in the domestic enquiry as perverse unless it is shown that such finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced before it. It is further stated that if there is evidence on record, however, compendious it may be and if it is acceptable, then conclusions arrived at cannot be termed as perverse. If the findings are reasonable, then the Tribunal will not be justified in interfering with the decision on mere abstruse or abstract basis. A finding cannot be called as perverse, because in some matters, the line of reasoning adopted by the Enquiry Officer is not very cogent or logical. In deciding the question whether a particular conclusion of fact is perverse or not, the Industrial Tribunal would not be justified in weighing the evidence for itself and determining the question of per-

versity of the finding recorded by the Enquiry Officer in the light of its own findings. The findings of the domestic Tribunal cannot be merely brushed aside unless they are shown to be based on no evidence. The findings cannot be assailed even though it is possible for some other authority to arrive at a different conclusion. Keeping in view, all the aforesaid principles, it requires to be examined whether the findings recorded by the Enquiry Committee at Ex. M-7 can be called as perverse. The chargesheet given to him is at Ex. M-3. It is alleged that he committed acts of misconduct which are shown in clauses 34 (5), (16), (31) and (57). Clause 34 (5) deals with disorderly behaviour, threatening and intimidating other employees. Clause 34 (6) deals with the using of any form of violence against any employee within the premises or captive township. Clause 34 (ii) deals with abusive language, assault or attempting bodily injury to another person or conduct which violates common decency. Clause 34 (7) deals with commission of any act subversive of discipline or good behaviour. These provisions were invoked by the management on the allegation that on 9-11-85 at about 6.40 p.m. the workmen along with other employees entered the room of the medical officer in the casualty section, without permission, indulged in indecent and violent behaviour and started abusing Ramaprasad in filthy and vulgar language like "soolemangane, holmagane etc. It is further alleged that he turned towards Muniraj and started abusing him in the same vulgar language and even though Muniraj was keeping quiet, the workmen slapped on his right cheek and started saying that he had not learnt any lesson from the past incidents and he would arrange to throw him and other officers in the agitator and kill them. It is further alleged that he was instigating other employees to indulge in violent acts. It is, further, stated that he had raised his hand with an intention of assaulting K. P. Bhat and also abused him. It is further alleged that since the situation became tense, the police authorities had to rescue the officers

Ex. M-4 is the explanation given by him. It is admitted by that he had rushed to the hospital to enquire about the condition of Nagaraj and found that Nagaraj had been taken to the X-ray room. He further alleges that on inquiry, he found that in the TTI area only one operator cum mechanic was deployed in place of three. He also states that when he was discussing with Nagaraj and other workers of the Crusher Dept. Muniraj the Senior Engineer was there and requested him to look into the matter and to do the needful, so that such accidents are not repeated. He further alleges that Muniraj rudely told him that the said situation will continue and he was not prepared to discuss the matter with him. It is then stated that he was taken aback and told him that the matter will be taken up with the higher authorities. It is on the same lines that he has put forth his case in the claim statement also. The Enquiry Committee has discussed the stand taken by the workman. It has also discussed the evidence of as many as eight witnesses examined by the workman before the committee. On pages 3 to 7 of Ex. M-7, the Enquiry Committee has set out the evidence of three management witnesses. Then from pages 7 to 22, the evidence of eight defence witnesses have been set out. The statement given by the workmen Janardhana has been set out on pages 22 and 23. The evidence, as culled out from the cross-examination of the workman has been put forth and considered on pages 23 to 26 of Ex. M-7. The evidence of injured DW-2 Nagaraj was of no assistance to the workman, since he was unconscious. The presence of PW-3 Ramaprasad was admitted by DW-3 Purtaiah and DW-4 Thippeswamy, DW-5 Tayanidhi, DW-7 Mrs. Diwakar and DW-8 Ranganath Babu. The evidence of PW-2 Bhat and PW-3 Ramaprasad indicated that PW-1 Muniraj was in the Doctor's room. The committee has held that the presence of PW-1 Muniraj in the hospital was thus not disputed. The case of the workman that he was outside the casualty room has been discussed by the Enquiry Committee and rejected for the reason that not only the three management witnesses supported the case of the management but there was corroborating material from the defence witnesses. DW-3, DW-4 and DW-5 had substantiated the evidence of PW-1 that he was then in the casualty room. The evidence of DW-1, DW-5 and DW-6 has not been accepted, since they admitted that they were outside the casualty, and the incident had taken place inside the said room. The evidence of PW-1 to PW-3 has been analysed and then it is held in 2544 GI/88--2.

Juxtaposition with the evidence of the defence witnesses and on final analysis, it has been held by the Enquiry Committee that the management did prove the acts of misconduct committed by him. The evidence of witnesses of both the sides has been discussed with reference to the sketch maps drawn by the witnesses to show their respective positions. The Enquiry Committee has observed that if the officers of the company had threatened the workman, nothing prevented the workman to give complaints to the management or to the union and the union would have taken up the matter with the management. Before the Enquiry Committee, no documents, were produced to show that any workman had complained against any officer about any threat. The workman Janardhana did not give any complaint to the police, if at all he had any grievance as a representative of the Union, against the said officers for their various acts of threats etc. On page 38 of the report, the committee has discussed about the contentions raised by the workman in his letter dated 12-5-86. It is not a case where the Enquiry Committee has not at all taken into account the evidence produced by the I party workman. The report Ex. M-7 itself points out that the committee gone through the record in detail and discussed each and every point raised by the I party workman. In my view it is not a case where no reasonable person could have arrived at the findings complained of, on the basis of the material placed before the Committee.

17. The I party workman has, in the claim statement and also in his evidence alleged that the II party has indulged in unfair labour practice and has victimised him. The V schedule has enumerated as many as 16 points showing acts of unfair labour practice on the part of the employers or unions of employers, in the first part. What is victimisation has been dealt with and commented upon under the heading victimisation on pages 901 to 905 of the Law of Industrial Disputes (by O. P. Malhotra), Fourth Edition, Volume 2. Victimisation is of two kinds. The first is, where the workman concerned is innocent and yet he is being punished, because he has in some way displeased the employer, for example, by being an active member of a trade union, which is acting prejudicial to the interest of the employer. From the foregoing discussion, it is evident that it is not a case where the workman is innocent, but still he is being punished for his trade union activities, supposing that he did participate in the trade union activities, which were prejudicial to the interest of the employer. The management has established that he did commit acts of misconduct and it is manifest that it is not a case that though he was innocent, he has been punished and made a sacrificial victim. The second instance of victimisation is where an employee has committed an act of misconduct but given a punishment quite out of proportion to the gravity of his offence, simply because he has incurred the displeasure of the employer or that the punishment is such that no reasonable employer would impose the same under such circumstances. The crux of the matter is to examine whether the employer is motivated in imposing a punishment which is highly disproportionate to the alleged act of misconduct or whether the quantum of punishment is motivated by some other factor such as maintenance of discipline and the just protection of the employer. In Annexure I to the counter statement, which is now marked as Ex. W-4, the management on its own has put forth its case that on as many as seven previous occasions, he had committed acts of misconduct and on some occasions punishments have been imposed on him. On the part of the workman, the claim statement starts with the description of his trade union activities. The trade union activities of the I party and the reaction of the management to the same have been set out in Paras 4 to 10. In the evidence of the workman dt. 13-4-88 and 24-6-88, he has put forth several instances to show that he has been victimised. The workman has not tendered himself for cross-examination by the management and has remained absent and his evidence dated 13-4-88 and 24-6-88 does not deserve acceptance, in the absence of cross-examination.

18. Ex. W-1 is his letter dated 28-4-86 and he seeks for 15 days time to send his written arguments. The written arguments of the workman is at Ex. M-6 from pages 64 to 68. The forwarding letter of Ex. M-6 is at page 69. It is dated 12-5-86. As observed earlier on page 38 of the Report Ex. M-7, the Enquiry Committee has taken into

account all the contentions raised in the written arguments Ex. M-6 sent to the Enquiry Committee along with the letter dated 12-5-86. The letter Ex. W-1 does not prove that the Enquiry Committee did not take into account his written arguments.

19. Ex. W-2 is a letter dated 30-5-83. The evidence of WW-1 in para 47 and the letter Ex. W-2 have been relied upon to show that he had been denied promotion. Promotion cannot be claimed as a matter of right and if the workman had been victimised or the II party had denied him promotion on account of extraneous considerations, nothing prevented the workman from raising an industrial dispute and more so when he has been an active trade union workman and an office bearer of the union on several occasions.

20. His evidence in Para 49 and the letter Ex. W-3 dt. 21-11-81 have been brought on record to indicate that he had been transferred for his trade union activities. The II party has contended in the counter statement that the transfer was on account of job requirement and it was within the same department and in the same building. The evidence at para 49 or Ex. W-3 did not prove any act of victimisation.

21. In para 52 of his evidence, the workman has stated that when employees were agitating for better facilities, the management stopped the exhibition of one film and the employees agitated against the same and then a chargesheet was issued to him. He relies upon the Annexure I enclosed by the II party to the counter statement and it is marked as Ex. W-4 showing that he had been punished on various occasions. The contention of the workman that he has been wrongly victimised cannot be accepted, for the reason that it was open for him at the proper time to challenge the orders of punishment by raising industrial disputes.

22. In para 52 of his evidence, the workman has stated that he was demoted from Electrician Grade I to Electrician Grade II and Ex. W-5 is that letter. Ex. W-5 dated 16-8-85 shows that from 22-6-85 he asked to draw a basic pay of Rs. 939 and according to WW-1, the workman, he was put to loss of Rs. 200 to Rs. 300 p.m. In para 7 of his claim statement, the workman has stated that he was elected as the Secretary of the Kudremukh Employees Union in 1983 and subsequently he was further elected as the ad hoc committee member of the said union and he has continued to hold the said post till the date he had filed the claim statement. In that event, there is no explanation as to why an industrial dispute was not raised and the order which put him to a loss of Rs. 200 to Rs. 300 p.m. was not challenged. The order of reference made to this Tribunal cannot be expanded, so as to decide about the legality or otherwise of the previous punishment imposed on him as shown in Ex. W-4 or W-5. Ex. W-7 dated 16-4-86 has been produced to show that in regard to the chargesheet dated 23-7-83, he was directed to refund a sum of Rs. 3,859 and he was reduced to a lower stage. Ex. W-7 proves that in pursuance to the chargesheet, an Enquiry Committee was constituted and it held an enquiry and found him guilty and after observing all the formalities, the said punishment was imposed on him. The order Ex. W-7 belies the contention of the I party that on previous occasions, the management has imposed punishment on him without complying with the provisions of the standing orders.

23. In para 53 of his evidence, the workman has stated that he used to apply for leave, but the management without sanctioning leave, used to treat him as unauthorisedly absent. In that connection, he has produced the documents at Exs. W-8 to W-25. Ex. W-8 dated 12-9-83 is a copy of the explanation given by him to the chargesheet dated 23-8-83. The explanation shows that the management had issued a regular chargesheet to him. The leave application at Ex. W-9 shows that leave for 24-9-83 was sanctioned but not for 23-9-83. It cannot be said that the ground on which the leave was refused is unreasonable. Ex. W-10 discloses that the concerned officer asked the workman to enclose a copy of the summons. If the workman was not able to substantiate the ground on which he had sought for leave, it cannot be said that the concerned officer refused him leave for no valid reason. Ex. W-11 is the petition given by him regarding office order dated 20-10-83. Ex. W-12 is a copy of the letter seeking for two days leave.

Ex. W-13 is a letter dated 23-3-84 by the management and it shows that whenever he intends to go on leave he had to produce a document to show that he had attended the court and it was found on enquiry that on 14-3-84, he did not attend before the Assistant Labour Commissioner or the Regional Labour Commissioner, Mangalore as contended by him. The workman has not produced any document to show whether he had sent any reply to the letter Ex. W-13, disputing that he did not attend to the meeting of the Assistant Labour Commissioner of the Regional Labour Commissioner on 14-3-84. Ex. W-14 is another letter by the management dated 11-4-84 and it shows that on 5-4-84 he had remained absent between 2 p.m. and 2.45 p.m. Again the workman has not produced any copy of the letter written by him in response to Ex. W-14, refuting the contentions of the management. Ex. W-15 dt. 18-4-84 is a letter by the workman to the management, against the punishment of censure imposed on him in regard to the chargesheet dt. 12-1-1984. It is obvious from Ex. W-15 that before imposing the punishment of censure, the management had issued a chargesheet to him and he was given an opportunity of defending himself. Ex. W-16 dated 8-5-84 is a letter showing that the workman had drawn a sum of Rs. 700 as advance to go to Bangalore in connection with an enquiry to be held on 30-4-84, but he did not attend the said enquiry at Bangalore on that day and had not performed that journey. He was, therefore, called upon to deposit the said amount before 10-5-1984. Ex. W-17 dated 9-5-84 is a reply to Ex. W-16 and it is conceded by him that himself and the co-worker could not attend that enquiry and the T.A. amount will be adjusted at the time of the next tour. By Ex. W-18, the management refused to concede to his request and asked him to deposit the same before 10-5-84. Ex. W-19 is a letter dated 17-5-84, again requesting the management to adjust the said amount in his salary of April. Ex. W-20 relates to his leave application and it indicates, he had been informed that if he were to produce the document to show that he had attended the court, the same would have been sanctioned and his request for leave from 12th to 16th of July, 1984 cannot be granted. Ex. W-21 is a letter by the II party to the workman in regard to his leave from 10-8-84 to 14-8-84. The letter is on the same lines that his leave applications without supporting documents will not be considered and he was advised to be punctual and proceed on leave only on due sanction. By Ex. W-22 he was informed that his request for leave without pay cannot be granted, because of the pending jobs at the shops. Ex. W-23 is a letter by the management to the workman that he had applied for leave on 5-9-84 for no valid grounds and it was treated as LWP. Ex. W-24 dated 25-1-85 indicates that he had remained absent from 21-1-85 to 25-1-85 and subsequently he had sent his application without supporting documents and since there was no document as his attendance at the court of the J.M.F.C. Mudigere or Regional Labour Commissioner, Bangalore, the same cannot be considered. Ex. W-25 dated 3-1-86 relates to the proceedings and he was requested to attend the enquiry on 4-1-86 at Kudremukh. Each of these documents has its own background and in the absence of the material produced to show under what set of circumstances they had been issued, it becomes difficult to hold that the I party workman had been victimised or that the management had indulged in unfair labour practice.

24. In Para 57 of his evidence, the I party workman has stated that on 9-11-85 Shri Duniraj had filed a complaint against him, the police investigated the same and then submitted a 'B' report and that they have given an endorsement as per Ex. W-26. The endorsement Ex. W-26 shows that the concerned records had been destroyed and he may contract the Sub-Inspector Shri P. Sridhara Rao. There is no explanation as to how Ex. W-26 supports his case. Ex. W-27 is a copy of the notice issued under Section 111 of the Code of Criminal Procedure by the Executive Magistrate, Mudigere. Ex. W-28 is the order passed in the criminal revision petition 26/86 by the Session Judge, Chickmagalur. It shows that the notice issued by the Magistrate as per Ex. W-27 was set aside, on the ground that the order is not defined. It does not show that the management indulged in any mala fide act, in as much as the Executive Magistrate had issued the show cause notice Ex. W-27.

25. Exs. W-29 and W-30 have been relied upon by him to show that his juniors have been promoted and he has been ignored. Ex. W-31 has been produced to show that

those who were promoted as shown in Exs. W-29 and W-30 have been further promoted as technicians and at that time he was not called for any interview. He has sworn that, thus he has been put a loss of Rs. 400 to Rs. 600. I cannot but reiterate that nothing prevented the workman from raising an industrial dispute by his union, through proper espousal. Ex. W-32 is a chargesheet dated 28-10-83 wherein it is alleged that he committed several acts of misconduct on 25-10-83. The said chargesheet has reference to Item No. 3 of Ex. W-4. Ex. W-33 is the explanation given by the workman in regard to Ex. W-32. Exs. W-32 and W-33 themselves indicate that the management had followed the procedure laid down in the standing orders before imposing on him the punishment shown at Sl. No. 3 of Ex. W-4.

26. Ex. W-34 is a chargesheet dated 12-8-82 and it refers to Sl. No. 1 of Ex. W-4. It deals with several acts of misconduct alleged to have been committed by him on 7-8-82. Ex. W-35 is the explanation sent by him to the said chargesheet. Ex. W-35 is enclosed with the copies of the proceedings held by the management in connection with the said chargesheet. Ex. W-34 and W-35 along with the enclosures prove that the management had conducted a regular enquiry and after finding him guilty, the punishment shown at Item No. 1 in Ex. W-4 was imposed on him.

27. Ex. W-36 is the chargesheet dt. 23-8-83 and it relates to Item No. 2 of Ex. W-4. Ex. W-37 is the explanation given by the workman to the same. These documents lead to an inference that the management had given him the opportunity to defend himself before imposing any punishment on him. Exs. W-36 and W-37 justify the punishment shown at Sl. No. 2 of Ex. W-4.

28. Ex. W-37 dt. 16-8-85 is an application by him for four days leave to attend the meeting of the Regional Labour Commissioner at Bangalore on 18-8-83. The document does not prove that the management had refused to grant him any leave, on account of any vindictive attitude.

29. Ex. W-39 dt. 13-6-83 has been relied upon to show that on 5-3-83, the D.P.C. had interviewed him and he was found suitable for the post of Technician II, subject to clearance of disciplinary cases. From the record, it is obvious that in the disciplinary cases pending against him, he was punished and there is no explanation as to how Ex. W-39 assist him in showing that he has been victimised.

30. In para 66 of his evidence, the workman has stated that all the records shown in Ex. W-4 are in the office of the II party at Bangalore and sometime back the Chief Personnel Officer had brought them to the court. In para 67, he further states that in N. P. No. 8075/88, filed by him the II party has filed a statement of objections and in para 8, it is admitted that the connected papers have been consigned to the records and it is difficult to retrieve them. On the basis of the said contention of Para 8 of Ex. W-10, WW-1 has stated that the II party has intentionally withheld the said documents. The II party has produced as many as 12 xerox copies of documents by a list dated 22-8-1983.

31. The first document is a letter dated 2-4-1986 and it shows that in regard to the chargesheet dated 19-9-1983 he had been exonerated. The document goes to show that the contention that the management has been consistently victimising him is shown to be not correct by the said letter dated 2-4-1986, since on due enquiry he had been exonerated. The second document is a chargesheet dated 19-9-1983, regarding which the first letter shows that he had been exonerated. These two documents relate to Item No. 6 of Ex. W-4. The management has not suppressed any fact and it has at the very beginning admitted that in regard to the chargesheet dated 19-9-1983, he has been exonerated. The document at Sl. No. 3 is the order of punishment in regard to chargesheet dated 23-7-1983. The punishment order dated 15-4-1986, regarding the chargesheet dated 23-7-1983 shows that an Enquiry Committee was constituted, it held an enquiry, found him guilty and thereafter the disciplinary authority himself examined the record again and having found him guilty, imposed the said punishment. The order puts at naught the contention of the I party that he management has punished him without holding proper enquiry.

32. The fourth document is a chargesheet dated 23-7-1983. This is the document on the basis of which a due enquiry was held and punishment as shown in document at Sl. No. 3 was imposed on him.

33. The document at Sl. No. 5 is the letter dated 28-9-1982 by the management of the workman. It calls upon him to send his explanation to the chargesheet dated 27-9-1984. The document at Sl. No. 6 is the chargesheet dated 27-9-84, in regard to which, the management had called upon him to give his explanation as per the document at Sl. No. 5. The document at Sl. No. 7 is the explanation given by the workman to the chargesheet dated 28-10-1983. It relates to Sl. No. 3 of Ex. W-4, regarding which there has been already a discussion. The document at Sl. No. 8 is the chargesheet dated 28-10-1983, for which the workman gave his explanation as per the document at Sl. No. 7.

34. The document at Sl. No. 9 is a letter dated 19-6-85 by the management to the workman that his explanation to the chargesheet dated 20-3-1983 was not satisfactory and therefore the punishment of censure was imposed. It further shows that an enquiry was held and the enquiry committee found him guilty and thereupon the management had imposed the said punishment. It relates to Item No. 2 of Ex. M-4.

35. The document at Sl. No. 10 is a chargesheet dated 23-8-1983 and it relates to the Sl. No. 2 of Ex. W-4 and in regard to which the punishment as shown in the document at Sl. No. 9 was imposed on him.

36. The document at Sl. No. 11 is a letter dated 19-6-1985 by the management to the workman and he was called upon to give his explanation in seven days to the chargesheet dated 12-8-1982. The document at Sl. No. 12 is the chargesheet dated 12-8-1982 in regard to which the letter at Sl. No. 11 was issued to him.

37. The document called for by the I party workmen thus show that on every occasion the management has adhered to the rules contained in the standing orders and on due enquiry it has imposed the punishments. For the sake of discussion, even if it is presumed that the management had acted in a vindictive manner on any one of those occasions, nothing prevented the workman to challenge them in proper forum through proper procedure. On close examination of the oral and documentary evidence placed on record, I find that the punishment imposed in the present case is for an act of gross misconduct in as much as the workman had abused in vulgar language and had assaulted his superior officer and there is no nexus between the punishment or the quantum of punishment and his trade union activities.

38. Taking into account the fact that the management had established that the motive of imposing punishment of dismissal is to maintain discipline and protect its legitimate interests, I am of the view that is not a fit case to invoke the provisions of Section 11-A of the I. D. Act.

39. In the result, an award is passed to the effect that the management of the Kudremukh Iron Ore Company Limited, Bangalore was justified in dismissing the services of Shir R. Janardhana and that he is not entitled to any relief.

(Dictated to the Personal Assistant, taken down by her, got typed and corrected by me).

B. N. LALGE Presiding Officer.

[No. L-26012/18/86-D. III (B)]

का, आ. 3124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मंसिर राजस्थान स्टेट माइंस एंड मिनरल्स लि., उदयपुर के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-88 को प्राप्त हुआ था।

S.O. 3124.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, is shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rajasthan State Mines and Minerals Limited., Udaipur and their workmen, which was received by the Central Government on the 22nd September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर ।

केस न. सी. एन. सी. 82/87

केन्द्र सरकार श्रम मंत्रालय की अधिसूचना सं. एल. 29012/11/87-डी-3(बी) दिनांक 9-9-87 ।

प्रेजीडेंट, राजस्थान स्टेट माइन्स एण्ड मिनेरल कर्मचारी संघ, चंदाबान जी की धर्मशाला के नजदीक, उदयपुर ।

—यूनियन

बनाम

महाप्रबंधक, राजस्थान स्टेट माइन्स एण्ड मिनेरल लिमिटेड, 133 महेली मार्ग, उदयपुर ।

—नियोजक

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर. एच. जे. एस.

यूनियन की ओर से : श्री जे. एल. शाह एवं श्री महेन्द्र सिंह खमेसरा

नियोजक की ओर से : श्री बी. पी. अग्रवाल

दिनांक अर्वाइ : 12-5-88

अर्वाइ

केन्द्र सरकार श्रम मंत्रालय ने निम्नलिखित विवाद इस न्यायाधिकरण को अधिनियम हेतु अपनी अधिसूचना सं. एल-29012/11/87-डी. III(बी) दिनांक 9-9-87 के द्वारा औद्योगिक विवाद अधिनियम 1947 को धारा 10(1) के अंतर्गत प्रेषित किया है—

“क्या मैंसे राजस्थान स्टेट माइन्स एण्ड मिनेरल लिमिटेड उदयपुर के प्रबंधन की श्रमिक श्री असलम हुसैन की हैलर श्रेणी-II में प्रोन्नति करने से इंकार करने की कार्यवाही उचित और सही है ?

2. बाद प्राप्तिनिर्देशन उभय पक्षकारान को नोटिस जरिये पत्रावलि डाक दिये गये । यह पत्रावलि आज वास्ते प्रेषित करने हेतु स्टेटमेंट आफ क्वेस क्वे उदयपुर नियत की गई थी । श्री महेन्द्र सिंह खमेसरा अध्यक्ष राज. स्टेट माइन्स एण्ड मिनेरल कर्मचारी संघ उदयपुर जरिये प्रार्थनापत्र यह लिख कर विदा कि प्रार्थी श्रमिक री असलम हुसैन की पदोन्नति के संबंध में यह विवाद था उसे सहायक कैटेगरी-II में पदोन्नत किया जा चुका है इस निर्देशन के संबंध में कोई विवाद शेष नहीं रह गया है । इसलिए मामले हाजा में नो डिस्पूट अर्वाइ पारित किया जाने । इस संबंध में राजस्थान

स्टेट माइन्स एण्ड मिनेरल लि. उदयपुर के अधिवक्ता श्री बी.पी. अग्रवाल ने इन विवाद के संबंध में कोई विवाद शेष नहीं है का पंचाट पारित करने में कोई एतराज न होना जाहिर किया है यह पक्ष प्रार्थी यूनियन स्वयं की उक्त प्रार्थना की दृष्टीगोचर करते हुए इस निर्देशन के संबंध में कोई विवाद शेष रहता प्रतीत नहीं होता है अतः मामले हाजा का इस प्रकार के संबंध में नो डिस्पूट अर्वाइ पारित किया जाता है अर्वाइ की प्रतिलिपि केन्द्रीय सरकार श्रम मंत्रालय को वास्ते सूचना एवं प्रकाशनाय अंतर्गतधारा 17(1) भेजा जावे ।

प्रताप सिंह यादव,

न्यायाधीश

[सं. एल-29012/11/87 डी. 3(बी)]

का. आ3125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार श्री राजेन्द्र रंगलाल श्रीमल, खान मालिक, सुमेर गंजमंडी के प्रबन्धन में सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-88 को प्राप्त हुआ था।

S.O. 3125.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sh. Rajendra Rengalal Shrinmal, mine Owner, Summerganj mandir, and their workmen, which was received by the Central Government on the 22nd September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर ।

केस नं. सी. आई. टी. 2/1987

केन्द्र सरकार श्रम मंत्रालय की अधिसूचना संख्या एल-29011/27/85-डी III(बी) दिनांक 13-10-86

पत्थर खान लेबर यूनियन इन्द्रगढ़, राजस्थान ।

—यूनियन

बनाम

श्री राजेन्द्र रंगलाल श्री माल. माईन ओवर सुमेरगंज मण्डी, राजस्थान ।

—नियोजक

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर. एच. जे. एस.

यूनियन की ओर से : श्री जयन्ती लाल शाह

नियोजक की ओर से : कोई नहीं

दिनांक अर्वाइ : 13-7-88

अर्वाइ

अग्राई

डेप्युटि ऑफिसर भारत सरकार श्रम मंत्रालय देहली ने जरिये अज्ञा संख्या एल.-29011/27/85-डो III(बी) दिनांक 13-10-86 अन्तर्गत धारा 10(1) (डी) अपठित धारा 2(1) औद्योगिक विवाद अधिनियम 1947 इसे तत्पश्चात अधिनियम लिखा जायेगा। निम्न विवाद वास्ते अधिनियमार्थ इस न्यायाधिकरण को प्रस्तुत किया।

"Whether the action of Shri Rajendra Ranglal Shrimal, Mine Owner, Sumerganjmandi in terminating the services of undermentioned workmen in contravention of Ecc. 25F of the I.D. Act, 1947 w.e.f. 1-2-85 is justified? If not, to what relief these workmen are entitled for?"

1. Shri Ramgopal S/o Shri Gopi
2. Shri Badrilal S/o Shri Radha Kishan
3. Smt. Dhanni W/o Shri Nonga
4. Smt. Keshar W/o Shri Kana
5. Smt. Kamla W/o Shri Moti
6. Smt. Rampyari W/o Shri Panchu

उक्त ऐकोरेम दिनांक 3-12-86 को इस न्यायाधिकरण में प्राप्त होने के पश्चात पंजीकृत किया गया। बाद पंजीकरण समय पक्षकारान को नोटिस जरिये पंजीकृत डाक द्वारा भेजे गये।

पत्थर खान लेबर यूनियन इन्द्रगढ़ जिले तत्पश्चात प्रार्थी यूनियन निश्चा जयेगा, कि ओर से सर्व श्री रामगोपाल पुत्र गोपी, श्री बद्रीलाल पुत्र श्री राधा कृष्ण श्रीमती धन्नी पत्नी श्री नैन्गा व श्री मती केशर पत्नी श्री काना, श्री मती कमला पत्नी श्रीमोती श्री मती रामप्यारी पत्नी श्री पांचू के सेवा समाप्ति के सम्बन्ध में स्टेटमेन्ट आफ क्लेम निम्न प्रकार में पेश किया। ये कि उक्त छः श्रमिक गण विपक्षी खान पर गत चार वर्षों से लगातार कार्य करते आ रहे हैं। जबकि उनका कार्य सदैव संतोषप्रद रहा है। ये कि श्री राजेन्द्र रंगलाल श्रीमाल पत्थर खान मालिक सुमेरगंज मण्डी ने उक्त श्रमिकगण को दिनांक 1-2-85 से मौखिक आदेश द्वारा सेवाभूक्त कर दिया। तत्पश्चात यूनियन के पदाधिकारियों ने खान के मालिक को पत्र लिखकर उन्हें सेवा में बहाल करने की मांग की, परन्तु विपक्षी ने इसका कोई उत्तर नहीं दिया। प्रार्थीगण का खान मालिक से कोई समझौता नहीं हुआ, और भारत सरकार ने ये विवाद वास्ते निर्णय प्रेषित किया है।

अन में प्रार्थना की कि श्रमिकगण रामगोपाल, बद्रीलाल, श्रीमती धन्नी, श्रीमती केशर, श्रीमती कमला, श्रीमती रामप्यारी की सेवा मुक्ति को अवैध घोषित किया जाये। और उन्हें पिछली तन्त्रवाह सहित एवं अन्य सुविधायें दिलाने हुये बहाल किया जावे। विपक्षी राजेन्द्र, रंगलाल, श्रीमाल खान मालिक सुमेरगंजमण्डी को नोटिस जारी किया, और उन्हें प्रार्थी यूनियन के द्वारा पेश किये गये स्टेटमेन्ट आफ क्लेम की प्रतिलिपि भेजी गई, बाबजूद प्राप्ति नोटिस व प्रतिलिपि स्टेटमेन्ट आफ क्लेम प्रार्थी खान मालिक की ओर से कोई उपस्थित नहीं आया। अतः दिनांक 28-11-87 को विपक्षी के खिलाफ एगुतन्का में कार्यवाही किये

जाने का आदेश पारित किया गया और प्रार्थी यूनियन को उनके दस्तावेजित व एकपक्षीय साक्ष्य पेश करने के लिये आज्ञा दी गई। परन्तु लगातार आगामी तीन तारीख पेशियों पर न तो कोई साक्ष्य पेश की गई और आज दिनांक 13-7-88 को यूनियन के अधिकृत प्रतिनिधि श्री जयन्ती लाल शाह ने कोई हिरासत पैरवी न होना व्यक्त किया। इस प्रकार आज प्रार्थी यूनियन की ओर से कोई उपस्थित नहीं है। प्रार्थी यूनियन को अनेकों बार प्रत्येक पेश करने व साक्ष्य पेश करने का अवसर दिया मगर प्रार्थी श्रमिकगण की ओर से कोई भी साक्ष्य में पेश नहीं हुआ न कोई प्रत्येक पेश हुये। इस प्रकार बारम्बार अवसर दिये जाने के पश्चात प्रार्थी श्रमिकगण हाजिर नहीं आये।

इससे स्पष्ट है कि विवाद का वाता में जाको कार्य रुचि नहीं है। यह भी स्पष्ट है कि प्रार्थी यूनियन व अप्रार्थी खान मालिक के मध्य कोई विवाद गेय नहीं है। अतः इन विवाद के सम्बन्ध में नो डिस्मूट अग्राई पारित किया जाना है।

अग्राई की प्रतिलिपि केन्द्रीय सरकार को अन्तर्गत धारा (17)(1) औद्योगिक विवाद अधिनियम 1947 के तहत भेजा जावे।

प्रताप सिंह यादव,

न्यायाधीश

[सं. एल-29011/27/85-डो-III(बी)]

नई दिल्ली, 5 अक्टूबर, 1988

का. आ. 3126.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में, जयपुर भितरल डवलपमेंट सिंडिकेट (प्रा.) लि. के प्रबन्धकों के सम्बद्ध शिपोजों और उनके कर्मचारियों के बीच, अनुबंध में सिद्धि औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचासट का प्रकाशित करने है, जो केन्द्रीय सरकार को 22-9-88 का प्राप्त हुआ था।

New Delhi, the 5th October, 1988

S.O. 3126.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Jaipur Mineral Development Syndicate Private Limited and their workmen, which was received by the Central Government on the 22nd September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

केस न सी.आई.टी. 12/1985.

रेफरेंस : भारत सरकार, श्रम मंत्रालय, नई दिल्ली की आज्ञा

क्रमांक एल. 20012(70) 84-डी III(बी) दिनांक
21-3-85 ।

डागोला सोप स्टोन माईन्स (गोलेच्छा ग्रुप) प्राफ
इन्डस्ट्रीज) एम्प्लोईज यूनियन, विजय बाग, टोंक
फाटक, जयपुर ।

—प्रार्थी

वनाम

मैलर्स जयपुर मिनरल डेवलपमेंट (प्रा) लि., पी. अं.
नीमला सैन्याल, रेलवे स्टेशन, दोसा ।

—प्रप्रार्थी

उपस्थिति

श्री प्रताप सिंह यादव, आर.एच.जे.एस.

प्रार्थी यूनियन की ओर से : श्री जुगल किशोर अग्रवाल
अप्रार्थी नियोजक की ओर से : श्री आर. सी. पापड़ीवाल
दिनांक अर्वाई 5 जुलाई 1988

अर्वाई

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के डेस्क
आफीसर ने अपनी उपरोक्त आज्ञा द्वारा निम्न विवाद अन्तर्गत
धारा 10(क)(घ) औद्योगिक विवाद अधिनियम 1947,
इस अधिकरण को वास्ते अधिनियम भेजा है :

"Whether the action of Messrs Jaipur Mineral Development Syndicate, Jaipur, in terminating the services of the undermentioned workmen is justified? If not, to what relief are they entitled?"

Name of the workman Designation Date of termination

1. Shri Hira Singh—Electrician—12-2-84.
2. Shri Laxmi Narayan—Winch Driver—29-1-84.
3. Shri Kalyan—Winch Driver—29-1-84.
4. Shri Ramji Lal—Driller—12-2-84.

2. बाद प्राप्त होने निर्देशन पक्षकारान् को जरिये
पंजीकृत डाक नोटिस जारी किए गए । प्रार्थी यूनियन की
ओर से श्री अग्रवाल ने स्टेटमेंट ऑफ क्लेम दिनांक 26-6-
85 को पेश किया । उत्तर क्लेम विपक्षी की ओर से श्री
कासा ने पेश किया । पतावली वास्ते पेश होने दस्तावेजात
नियुक्त थी । किन्तु आज श्री आर. सी. पापड़ीवाल श्री
जे. के. अग्रवाल की प्रार्थना पर पतावली पेशी में ली गई ।
यह निर्देशन चार श्रमिकों श्री होरा सिंह श्री लक्ष्मी नारायण,
श्री कल्याण व श्री रामजीलाल की सेवा समाप्ति से संबंधित
है । श्री होरा सिंह बावन इस मामले में पहले ही यानि कि
दिनांक 29-9-87 को ही बाह्यी समझौता हो जाने से न
डिस्प्यूट अर्वाई पारित किया जा चुका है । अब यह
विवाद बाकी बचे हुए तीन श्रमिकों के संबंध में चल रहा
है ।

श्री आर. सी. पापड़ीवाल यांय अधिवक्ता, जयपुर
मिनरल डेवलपमेंट सिन्डिकेट प्रा लि. नीमला, रेलवे
स्टेशन दोसा की ओर से व श्री जुगल किशोर अग्रवाल,
अधिष्ठित प्रतिनिधि डागोला सोप स्टोन एम्प्लोईज यूनियन व

प्रार्थीगण सर्वश्री कल्याण मीन, लक्ष्मीनारायण (लक्ष्मण) व
रामजीलाल उपस्थित हैं ।

4. प्रार्थी यूनियन व प्रार्थीगण के अधिष्ठित प्रतिनिधि
अप्रार्थी नियोजक के अधिवक्ता ने दिनांक 5-6-88 का एक
प्रार्थना पत्र मर समझौते के पेश किया व प्रार्थना की कि
समझौते के अनुसार अर्वाई पारित किया जावे । समझौता पत्रकर
मुनाया व समझाया गया । जिसे सही होना स्वीकार किया
गया । सही होना स्वीकार करने पर समझौते को तत्दीक
कियो गया ।

5. दोनों पक्षों की प्रार्थना व समझौते को देखते हुए
इस मामले में समझौते के मुताबिक अर्वाई पारित किया
जाता है । समझौते की शर्तें पंचाट का अंग रहेंगी ।

6. पंचाट की प्रति भारत सरकार का दाख़ा प्रकाशन
नियमानुसार भेजी जावे ।

प्रताप सिंह यादव,
पीठासीन अधिकारी
[मं एल-29012/70/84-डी III(बी)]

का.आ. 3127.—औद्योगिक विवाद अधिनियम,
1947 (1947 का 14) की धारा 17 के अनुसरण में,
केन्द्रीय सरकार उक्त अधिनियम की धारा 33A में आर्जन
श्री सत्यनारायण शर्मा द्वारा मै. जापुर मिनरल डेवलपमेंट
सिन्डिकेट (प्र०) लि., जयपुर के प्रामाणिक के विरुद्ध दाख़र
एक प्रार्थना पत्र के लक्ष्य में औद्योगिक अधिकरण, जयपुर
के पंचपट का प्रकाशन करता है, जो केन्द्रीय सरकार का
22-9-88 का प्राप्ता हुआ था ।

S.O. 3127.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur in respect of an application u/s 33A of the said Act filed by Sh. Satya Narain Sharma against the management of M/s. Jaipur Mineral Development Syndicate Private Limited, Jaipur which was received by the Central Government on the 22nd September, 1988.

ANNEXURE:

CENTRAL INDUSTRIAL TRIBUNAL, JAIPUR

Case No. CIT-1/1988

REFERENCE GOVERNMENT OF INDIA

APPLICATION U/S 33A OF THE INDUSTRIAL DISPUTES ACT 1947

Shri Satya Narain Sharma, General Secretary, Rashtriya Khannan Mazdoor Congress Soapstone Mines, Dagota, Devali ji ka Mandir, Jaipur.

..Petitioner

Vs.

Chief Executive, Jaipur Mineral Development Syndicate Pvt. Ltd., Prem Prakash, SMS Highway, Jaipur.

...Non-petitioner

PRESENT

Shri P. S. Yadav, RHJS

For the Petitioner Union : Sh. Satya Narain Sharma

For the Employer : Shri R. K. Kala

Date of Award : 13th July, 1988

AWARD

This is an application filed under Section 33A of the Industrial Disputes Act, 1947, hereinafter referred to as the Act, with the following allegations :—

That the non-petitioner management is not following the terms of settlement date 5th August 1947. It has also been alleged that the employees have been deceived and victimised. It has further been complained that the petitioner union has been derecognised. It is also pleaded that against the provisions of the Act, the non-petitioner management, all of a sudden, on 6th April, 1987 deprived the workers of the work and thereafter on 28th April, 1988, they declared lock out. It is also alleged in the petition that the employees have illegally been deprived of the wages from March 1980 till date and testily, it has been alleged that the service conditions of the workmen have changed against the provisions of the Act. In the end, it has been prayed that a direction be given to the management to comply with the terms of the settlement and also prayed that the non-petitioner be further directed to restore the recognition of the union and the workers be paid their full wages from 6th April, 1988 and change in their service conditions of the members of the union be restored.

2. On behalf of the non-petitioner, a preliminary objection has been raised regarding the maintainability of the complaint on the following grounds; That the complaint is not maintainable under Section 33A of the Act as there is no violation of any provisions of Section 33 of the Act. It has also been contended that this complaint has not been filed by any individual workman. It has collectively been filed by union which has no locus standi to file such a complaint. The pendency of the industrial dispute has also not been referred to whereby any individual might have made a complaint of violation of Section 33 nor has any workman shown to be "the concerned" workman in the previous pending industrial dispute; as such the complaint deserves to be dismissed in limine.

3. As the preliminary objection goes to the root of the case, so I have heard the learned General Secretary of the Union and the learned counsel for the non-petitioner and have given my anxious thought regarding this point at issue.

4. Section 33A of the Act is the relevant provision to be reproduced here for ready reference which runs as follows :—

"During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or where there are no such standing order in accordance with the terms of the contract. Whether express or implied, between him and the workman (b) :

- After, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- For any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman :

Provided that no such workman shall be discharged or dismissed unless he has been paid wages or one month and an application has been made by the employer for the authority before which the proceeding is pending for approval of the action taken by the employer."

Considering the scope of this section, the following requirements are essentially to be fulfilled in order to attract Section 33A of the Act. That firstly, there has been a contravention by the employer of provisions of Section 33 of

the Act. Secondly, the applicant should be a workman within the definition of Section 2(s) of the Act. Thirdly, the applicant should be a workman concerned in the pending dispute and fourthly the applicant should be aggrieved by the alleged contravention of Section 33 by the employer. From the complaint itself it is manifestly evident that the complaint has been filed by the Secretary of the union. No individual has been shown to be an aggrieved workman by any of the action of the employer during pendency of industrial dispute. The word "any employees aggrieved" contained in Section 33A is very much material and significant. An aggrieved should be an individual employee whose grievances are to be redressed through this complaint. In an application under Section 33A, the workman should satisfy the tribunal by proving the pendency of an industrial dispute and that he is a concerned workman in the pending dispute. Undoubtedly, the complaint has been made by a trade union. The right to complaint against the contravention of Section 33-A has been conferred upon an employee aggrieved. It is, therefore, only such an employee who has a right to make an application under Section 33-A of the Act should come to the tribunal. The registered trade union which made grievances against the employer in the main complaint is not an individual workman and hence it cannot be said to be "a workman concerned" unless the union has been authorised by individual workman. The complaint in the present from therefore, is not maintainable as there is no fulfilment of the statutory provisions. Therefore, this complaint under Section 33-A filed by the General Secretary of the Rashtriya Khaman Mazdoor Congress, Soapstone mines, Dagota is hereby dismissed in limine.

4. Award is pronounced in the open court on 13th day of July, 1988. Let a copy of the Award be sent to the Central Government for publication as per law.

P. S. YADAV, Presiding Officer.

[No. L-29025/1/88-D. III (B)]

का. आ. 3128:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री ओम प्रकाश, शर्मा बजरंगलाल बदरी लाल गुप्ता, खान स्वामी, सुमेर जैन मंडी, ईदरगढ़ जिला बून्दी (राज.) के प्रबंधक के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-88 को प्राप्त हुआ था।

S.O. 3128.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Shri Om Prakash, M/s. Bajaranlal Badrilal Gupta, Mine Owner, Sumerganj Mandi, Indergarh, Distt. Bundi (Rajasthan) and their workmen, which was received by the Central Government on the 22nd September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।
केस नं. सी. आई. टी. 27/86

केन्द्र सरकार श्रम मंत्रालय की अधिसूचना संख्या 3/
62/85—कोन. 11 दिनांक 8-5-86

पत्थर खान लेबर यूनियन इन्द्रगढ़

—युनिवर्स

विवरण

श्री ओम प्रकाश मै, बजरंग लाल बद्रो लाल गुप्ता
माइन ओनर मुमेरगंजमण्डी इन्द्रगढ़ डिस्ट्रिक्ट बंडो (राज.)

—नियोजक

उपस्थिति

माननीय व्यापारी श्री प्रताप सिंह रादव, आर. एच.
जे. एम.

यूनियन की ओर से : श्री जयन्ती लाल शाह
(जिन्होंने हिंदी में पेश की)
हामी आहिर की।

नियोजक की ओर से : नियोजक पक्ष के विरुद्ध
एकतरफा कार्यवाही

दिनांक अर्वाइ : 13-7-88

अर्वाइ

भारत सरकार के श्रम मंत्रालय की डेस्क आफिसर ने
ये विवाद जरिये आशा संख्या 3/62/85—कान 11 दिनांक
8-5-86 इस व्यापारिक अधिकरण को वास्ते अधिनियमित भेजा।

"Whether the action of Shri Omprakash S/o Shri
Badri Lal M/s. Bajaranj Lal Badri Lal Gupta,
Mine Owner Indergarh Lime Stone Mines Distt.
Bundi in terminating the services of the following
truck drivers is justified? I not, to what relief the
workmen are entitled for?"

Shri Prabhu Lal S/o Kana Mali

2. Shri Krishan Singh S/o Mitha Lal

3. Shri Majit Khan S/o Ramjan Khan

इस निर्देशन को दिनांक 20-5-86 को पंजीकृत किया
जाकर पक्षकारान का नोटिस भेजा गया। प्रार्थी यूनियन की
ओर से श्री जयन्ती लाल शाह हाजिर आये। और अध्यक्ष
पत्थर खान लेबर यूनियन इन्द्रगढ़ द्वारा स्टेटमेंट आफ
क्लेम निम्न प्रकार से प्रस्तुत किया।

ये कि पत्थर खान लेबर यूनियन इन्द्रगढ़ एक पंजीकृत
यूनियन है। बूंदों जिले में विभिन्न खानों में कार्य करने
वाले श्रमिक इस यूनियन के सदस्य हैं और मैसर्स बजरंग
लाल बद्रो लाल गुप्ता को खानों पर कार्य करने वाले
इस यूनियन के सदस्य हैं, आगे व्यक्त किया कि इस विवाद
में सम्बन्धित श्रमिक भव श्री प्रभु सैनी, मजीत, किशन सिंह
जिनको श्रमिकगण के नाम से सम्बोधित किया गया है,
पिछले चार वर्षों में नियोजक को खान पर ड्राईवर
के पद पर काम करने आ रहे हैं। विपक्षी खान पर कार्य
करने वाले श्रमिकों ने न्यूनतम वेतन, साप्ताहिक अवकाश
व आठ घंटे की इयटी को लेकर तारीख 30-10-84
को हड़ताल की, जिस हड़ताल में प्रार्थी तीनों श्रमिकगण
ने भी भाग लिया। इस हड़ताल के फलस्वरूप दिनांक 20-
11-84 को समझौता सम्पन्न हुआ। उसके बाद तीनों श्रमिक
को काम पर नहीं लाया। यद्यपि ये तीनों श्रमिकगण राजाना
खान पर इयटी पर आते थे, मगर फिर भी उन्हें काम

पर नहीं लिया तो प्रार्थी यूनियन ने विपक्षी से उन्हें बहाल
करने की मांग की, मगर फिर भी उन्हें बहाल नहीं किया।
श्रमिक विवाद प्रार्थी यूनियन की ओर से महायुक्त श्रम आयुक्त
कोटा के समक्ष प्रस्तुत किया गया और समझौता बातों
श्रमफल होते पर उपरोक्त रेफरेन्स इस व्यापारिक अधिकरण को
प्रस्तुत किया गया है। अन्त में प्रार्थी की कि श्रमिक
प्रभु सैनी, मजीत, किशन सिंह की सेवा मुक्ति अवैध
घोषित की जावे और उन्हें पिछला पूरा वेतन सभी उप-
लब्ध सुविधाओं सहित दिलाया जावे। विपक्षी को उपरोक्त
स्टेटमेंट आफ क्लेम की नकल भेजी गई, बावजूद प्राप्ति
स्टेटमेंट आफ क्लेम की नकल व नोटिस अप्रार्थी की ओर
से कोई उपस्थित नहीं आया। इसलिये जरिये आशा दिनांक
7-10-87 अप्रार्थी नियोजक के विरुद्ध एकतरफा कार्यवाही
किये जाने का आदेश पारित किया गया।

तत्पश्चात दिनांक 23-11-87, 11-1-87, 25-2-88,
11-4-88 व 17-5-88 का प्रार्थी यूनियन को उनके
स्टेटमेंट आफ क्लेम की पुष्टि में प्रेषण पेश करने व
सा पेश करने के अवसर दिये, मगर न तो कोई दस्तावेज
ही क्लेम को पुष्टि में पेश किया और न साक्ष्य ही पेश
की।

आज दिनांक 13-7-88 को यूनियन के अधिकृत
प्रतिनिधि श्री जयन्ती लाल शाह ने लिखन में दित कि
उन्हें कोई दिवारा पैरवो नहीं है। इसको मध्य तजर
रखते हुये आज प्रार्थी यूनियन की ओर से भी कोई प्रति-
निधि उपस्थित नहीं है ना ही दस्तावेजान व साक्ष्य पेश की
गई है। इस प्रकार वाराहा अवसर दिये जाने के पश्चात
स्टेट मेंट आफ क्लेम की पुष्टि में कोई दस्तावेज पेश
नहीं किया गया न साक्ष्य पेश की गई यहां तक की अब
कार्यवाही में भाग लेना भी बन्द कर दिया है। इससे
स्पष्ट है कि प्रार्थी यूनियन इस विवाद में आगामी कार्यवाही
के सम्बन्ध में कोई रुचि नहीं ले रही है

फलातः ये अनुमान है कि इन मामले में कोई विवाद
शेष नहीं रहा है। अतः मौजूदा रेफरेन्स के सम्बन्ध में
नॉडिस्प्यूट अर्वाइ पारित किया जाता है। अर्वाइ की प्रति-
लिपि केन्द्रीय सरकार को जिस धारा 17(1) औद्योगिक
विवाद को वास्ते कार्यवाही हेतु भेजा जावे। आज दिनांक
13-7-88 को लिखाया गया।

प्रताप सिंह रादव, व्यापारी

[नं. एल-3/62/85-कान II / श्री. III (बी)]

का. आ. 3129:—औद्योगिक विवाद अधिनियम,
1947 (1947 का 14) का धारा 17 के अनुवर्ण में,
केन्द्रीय सरकार श्री अब्दुल हाजीज, मुख्य श्री हाजी अब्दुल
रहमान, खान मालिक, अन्तर्निष्ठा लाइम स्टोन मार्वल,
मुकेत के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्म-
कारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में
औद्योगिक अधिकरण, जयपुर के पंचपट का प्रकाशित करती
है, जो केन्द्रीय सरकार को 21-9-88 को प्राप्त हुआ था।

S. O. 3129.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Shri Abdul Hafiz, S/o Haji Abdul Rehman, Mine Owner, Amralia Lime Stone Mine, Suket and their workmen, which was received by the Central Government on the 22nd September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, राज., जयपुर
केस नं. सी.आई.टी. 64/87

रेफरेंस : भारत सरकार, श्रम मंत्रालय, नई दिल्ली
की आज्ञा क्रमांक एल 21011/29/86-
डी-III(बी) दिनांक 15-6-87
महामंत्री, राष्ट्रीय मजदूर संघ, रामगंज मण्डी,
कोटा

अनाम

श्री अन्दुल हफीज पुत्र श्री हाजी अन्दुल
रहमान भाईन और अन्नालिया लार्डम स्टोन
पोस्ट सुकेत, कोटा

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव,

आर.एच.जे.एस.

यूनियन पक्ष की ओर से : श्री सीताशरण देवलिया

नियोजक पक्ष की ओर से : कोई हाजिर नहीं

दिनांक अर्वाइ : 29.7.88

अर्वाइ

भारत सरकार, श्रम मंत्रालय के डेस्क आफिसर ने जेरिए
अधिभूत संख्या एल. 21011/29/86-डी. III(बी) दिनांक
15.6.87 निम्न विवाद अंतर्गत धारा 10 (1-डी) एवं
धारा 10 (2-डी.) औद्योगिक विवाद अधिनियम 1947
जिसे तत्पश्चात् अधिनियम कहा जाएगा, वास्ते अधिनियम
इस न्यायाधिकरण को प्रेषित किया है .

"Whether demand numbers 1 to 5, 8 and 14 contained
in 15 point charter of demand number 191/1986,
dated 7-5-86 (copy enclosed) submitted by Rash-
triya Mazdoor Sangh, Ramganj Mandi, Kota,
Rajasthan are justified? If yes what relief are the
employees entitled to?"

संग पत्र

- 1 यह कि आपकी खदान में कार्यरत सभी कारीगरों
(स्टोन कटर) को 107 वर्ग फुट का पर्यर कटाई
पर 28/- रुपये प्रतिदिन के हिसाब से मजदूरी भुगतान
की जाए ।
- 2 यह कि आपकी खदान में कार्यरत सभी कुली, बेनदारों
को 15/- रुपये प्रतिदिन के हिसाब से मजदूरी
भुगतान की जावे ।
- 3 यह कि आपकी खदान पर कार्यरत सभी स्थाई
कर्मचारियों को ओम प्रकाश कमेटी के हिसाब से
मंहगाई भत्ता दिया जाये या जिस कर्मचारी को
1000/- रुपये तक वेतन मिलता आ रहा है उसकी
80/- रुपये की वेतन वृद्धि की जावे तथा जिन कर्मचारी
को एक हजार से अधिक वेतन मिल रहा है उसे 100/-
रुपये की वेतन वृद्धि की जाए ।
- 4 यह कि सभी श्रमिकों व कर्मचारियों को 12 केजुअल
कम सिक लीव दी जाए ।
- 5 यह कि आगामी वर्ष में श्रमिक हेतु एक खस भेजी
जावे जो श्रमिक भ्रमण में जावे ।
- 6 यह कि उसको ओन ड्यूटी भेजा जावे तथा पूरा खर्चा
वहन किया जावे ।

- 6 यह कि सभी श्रमिकों व कर्मचारियों को मेडिकल बिन
पास किये जावे ।
- 7 यह कि सन 1984-85 का बोनस 15 प्रतिशत की
दर से भुगतान किया जाए ।
- 8 यह कि खदान में कार्यरत सभी कर्मचारियों को रक्षा
बन्धन की सत्रैतिक छुट्टी दी जावे ।
- 9 यह कि आपकी खदान आफिस पर एक एम्ब्रूजेंस मंगवाई
जाकर खड़ी की जावे जो 24 घण्टे वहाँ खड़ी रहे जब
कभी भी कोई श्रमिक बीमार जो जावे या चोट लग
जावे तो उसे तत्काल अस्पताल पहुँचाने में सुविधा हो सके ।
- 10 यह कि खदान पर नो लो नो प्रोफिट पर आपके द्वारा
केन्टीन चालू किया जावे ।
- 11 आपकी खदान अतरालिया पर पूरे समय के लिए
एक डाक्टर, कम्पाउन्डर व नर्स की नियुक्ति की जावे ।
- 12 खदान में कार्यरत सभी श्रमिक व कर्मचारियों को
माईन्स एक्ट के अनुसार जूते, व चर्म व हैलमेट दिये जावे ।
- 13 आपकी खदान पर नो लोस नो प्रोफिट में कोआपरेटिव
स्टोर खोला जाए जिसके माध्यम से सभी श्रमिकों व
कर्मचारियों को खाय सामग्री उपलब्ध हो सके ।
- 14 खानों के मैनेजर, फोरमैन, मुन्शियों व सुपरवाइजर्स
व पानी वाली को एक माह की पी.एल. व 28 दिन
की सी.एल. छुट्टी दी जाए ।
- 15 खदान अतरालिया पर एक आधुनिक कालोनी का निर्माण
किया जाए ।

बाद प्राप्ति निर्देशन, इसे न्यायालय हाजा में पंजीकृत
किया गया और उभय पक्षकारान को नोटिस दिये गये ।
राष्ट्रीय मजदूर संघ राम गंजमण्डी जिसे तत्पश्चात् संघ लिखा
जाएगा, की ओर से श्री सीता शरण देवलिया उपस्थित आए
जिन्होंने लिखित में यह पेश किया कि इस विवाद के सम्बन्ध
में जो मांग पत्र संघ ने नियोजक को प्रस्तुत किया था वह
मांग काफी पुरानी थी और उन मांगों में से अधिकांश मांगें
पूरी हो चुकी हैं और मौजूदा परिस्थिति में श्रमिक गण को
मांगों में मांगी गई राशि से अधिक राशि का भुगतान किया
जा रहा है। इस कारण से पूर्व में रखे गए मांगों के सम्बन्ध
में प्रार्थी गण कोई क्लेम प्रस्तुत करना नहीं चाहते हैं ।
अतः इस विवाद में नो डिस्पूट अवार्ड पारित किया जाए ।
इस प्रकार की तहरीर से पूर्व प्रार्थी यूनियन को स्टेटमेंट
आफ क्लेम पेश करने के लिए 9 अवसर दिये गये परन्तु
कोई क्लेम पेश नहीं किया गया । अब संघ की ओर से जो
लिखित में प्रार्थना पत्र पेश की गई है, इससे ये विदित है
कि प्रार्थी संघ का कोई विवाद अप्रार्थी नियोजक पक्ष या
अन्नालिया लार्डम स्टोन पोस्ट सुकेत (कोटा) से नहीं रहा
है। चूँकि कोई विवाद शेष नहीं है इसलिए इस निर्देशन के
सम्बन्ध में नो डिस्पूट अवार्ड पारित किया जाता है । पंचाट
की प्रति अंतर्गत धारा 17(1) औद्योगिक विवाद अधिनियम,
केन्द्रीय सरकार श्रम मंत्रालय को वास्ते उचित कार्यवाही
भेजी जाए ।

ह०/- अपठनीय

न्यायाधीश

[सं एल-21011/29/86-डी III (बी)]

का. आ. 3130 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री मदसूद भाई, सुबुत श्री लुकमान भाई, जुल्मी लाईम स्टोन खदान मालिक के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/9/88 को प्राप्त हुआ था।

S.O. 3130.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Shri Maqsood Bhai, S/o. Shri Lukman Bhai Zulmi Limestone Mine Owner and their workmen, which was received by the Central Government on the 22nd September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, राज जयपुर
केस नं. सो. आई. टी. 33/87

रेफरेंस: भारत सरकार, श्रम मंत्रालय नई दिल्ली की आज्ञा
क्रमांक एन. 21011/28/86—डी III (बी)
दिनांक 5-5-87

महामंत्री, राष्ट्रीय मजदूर संघ, रामगंज मण्डी,
कोटा बंसा

श्री मकसूद भाई पुत्र श्री लुकमान भाई, जुल्मी
लाईम स्टोन माईन आंतर पोस्ट मुकेत, कोटा
उपस्थिति

माननीय न्यायाधीश भी प्रताप सिंह यादव,

आर. एच. जे.एस.

यूनियन पक्ष की ओर से श्री सीता शरण देवलिया
नियोजक पक्ष की ओर से कोई हाजिर नहीं
दिनांक अक्टूबर 29-7-88

अवार्ड

भारत सरकार, श्रम मंत्रालय के डेस्क आफिसर ने
जरिए अधिसूचना संख्या एन. 21011/28/86—डी
III (बी) दिनांक 5-6-87 निम्न विवाद अंतर्गत धारा
10(1) 1—(डी) एव धारा 10(2—डी) औद्योगिक विवाद
अधिनियम 1947 जिन तत्पश्चात् अधिनियम कहा जाएगा,
वास्ते अधिनियम इस न्यायाधिकरण को प्रेषित किया है।

"Whether demand numbers 1 to 5, 8 and 14 contained
in 15 point charter of demand number 192/1986
dated 7-5-86 (Copy enclosed) submitted by Rash-
triya Mazdoor Sangh, Ramgang Mandi, Kota
Rajasthan are justified? If yes, what relief are
the employees entitled to?"

मांग पत्र

1. यह कि खदान में कार्यरत सभी कारीगर (स्टोन
कटर) को 107 वर्ग फुट पत्थर कटाई पर 20 रुपये
भुगतान किए जाएं।

2. खदान में कार्यरत सभी कुली, बेलदारों को 15 रुपये
प्रतिदिन के हिमाब से मजदूरी भुगतान की जाए।

3. कार्यरत सभी स्थाई कर्मचारियों को ओमप्रकाश
कमेटो के हिमाब से मंहगाई भत्ता दिया जावे या जिस
कर्मचारी को 1000 रुपये तक वेतन मिलता आ रहा है उसकी
80 रुपये की वेतन वृद्धि की जाए। जिस कर्मचारी को
एक हजार रुपये से अधिक वेतन मिलता है, उसे भी रुपये
तक वेतन वृद्धि दी जाए।

4. सभी श्रमिकों व कर्मचारियों को 12 के केजुअल
कम सिक लीव दी जाएं।

5. आगामी वर्ष में श्रमिकों के लिए एक बस भेजी
जाए और जो श्रमिक भ्रमण में जाये उनको ओन ड्यूटी
भेजी जाए और उसे पूरा खर्चा वहन किया जाए।

6. सभी श्रमिकों व कर्मचारियों के मेडिकल बिल
पास किये जाएं।

7. 1984-85 का बोनस 15 प्रतिशत की दर से
भुगतान किया जाए।

8. कार्यरत सभी कर्मचारियों को रक्षा बंधन की
सबैतनिक छुट्टी दी जाए।

9. खदान आफिस पर एम्बुलैस मंगवाई जाकर खड़ी
रखी जाए जो 24 घण्टे वहीं रखे और कोई बीमार श्रमिक
हो जाए या चोट लग जाये तो तत्काल अस्पताल पहुंचाने
की सुविधा हो सके।

10. खदान पर नो लोस नो प्रोफिट के आधार पर
पर केन्टीन चालू की जाए।

11. खदान जुल्मी पर पूरे समय के लिए एक डाक्टर,
कम्पाउन्डर, नर्स की नियुक्ति की जाये।

12. खदान में कार्यरत सभी श्रमिकों व कर्मचारियों
को माईन्स एक्ट के अनुसार जूते व चश्मा व हेलमेट दिये
जाएं।

13. खदान पर नो लोस नो प्रोफिट में कोअपरेटिव
स्टोर खोला जाए जिसके माध्यम से श्रमिकों व कर्मचारियों
को खाद्य सामग्री मिल सके।

14. खानों में मैनेजर, फोरमैन, सुपरवाइजर्स,
पानी वालों को एक माह की पी. एन. व 20 दिन की
सी. एन. छुट्टी दी जाए।

15. खान जुल्मी पर एक आधुनिक कालोनी का
निर्माण किया जाए।

आद प्राप्त निर्देशन, इसे न्यायालय हाजा में पंजीकृत
किया गया और अन्य पक्षकारान को नोटिस दिये गये।
राष्ट्रीय मजदूर संघ रामगंजमण्डी जिसे तत्पश्चात संघ लिखा
जाएगा, की ओर से श्री सीताशरण देवलिया उपस्थित आए
जिन्होंने लिखित में यह पेश किया कि इस विवाद में संबन्ध

में जो मांग पत्र संघ ने नियोजक को प्रस्तुत किया था वह मांग काफी पुरानी थी और उन भागों में से अधिकांश पूरी हो चुकी है और मौजूदा परिस्थिति में श्रमिक गण को मांगों में मांगी गई राशि से अधिक राशि का भुगतान किया जा रहा है। इस कारण से पूर्व में रखे गए मांगों के सम्बन्ध में प्रार्थीगण के कनेम प्रस्तुत करना नहीं चाहते हैं। अतः इस विवाद में सम्बन्ध में नो डिस्प्यूट अवार्ड पारित किया जाए। इस प्रकार की तहरीर से पूर्व प्रार्थी यूनियन को स्टेटमेंट आफ क्लेम पेश करने के लिए 6 अवसर दिये गए परन्तु कोई क्लेम पेश नहीं किया गया। अब संघ की ओर से जो लिखित में प्रार्थना पत्र पेश की गई है, इससे यह विदित है कि प्रार्थी संघ का कोई विवाद अप्रार्थी नियोजक पक्ष यानि मै. जुन्मी लाईम स्टोन माईन्स ओनर पोस्ट सुकेत जिला कोटा से नहीं रहा है। चूंकि कोई विवाद पेश नहीं है इसलिए इस निर्देशन के सम्बन्ध में नो डिस्प्यूट अवार्ड पारित किया जाता है पंचाट की प्रति अंतर्गत धारा 17(i) औद्योगिक विवाद अधिनियम केन्द्रीय सरकार, श्रम मंत्रालय के वास्ते उचित कार्यवाही भेजी जाए।

अपठनीय

[सं. एल 21011/28/86 -डी III(बी)]

का. आ. 3131—औद्योगिक विवाद अधिनियम ('1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. ईस्ट सुकेत श्रमिक ठेका पाषाण उद्योग सहकारी समिति लि. सुकेत के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण जयपुर के पंचपट कों प्रकाशित करती है, जो केन्द्रीय सरकार को 22 सितम्बर 88 को प्राप्त हुआ था।

S. O. 3131.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. East Suket Shramik Theka Pashan Udyog Sahkari Samiti Ltd., Suket and their workmen, which was received by the Central Government on the 22nd September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, राज, जयपुर
केस नं. सी. आई. टी. 52/87

रेफरेंस. भारत सरकार श्रम मंत्रालय, नई दिल्ली की आज्ञा
क्रमांक एल 21011/30/86—डी III, (बी)
दिनांक 23-6-87

जनरल सैक्रेटरी, राष्ट्रीय मजदूर संघ रामगंज मण्डी,
जिला कोटा।

बनाम

प्रेसिडेंट एण्ड सैक्रेटरी, मैसर्स ईस्ट सुकेत श्रमिक
ठेका पाषाण उद्योग सहकारी समिति लि. पोस्ट
(कोटा)

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव
आर. एच. जे. एस.

प्रार्थी यूनियन की ओर से: श्री सीता शरण देवलिया
अप्रार्थी नियोजक की ओर से कोई हाजिर नहीं
दिनांक अवार्ड 29-7-88

अवार्ड

भारत सरकार श्रम मंत्रालय के डेस्क ऑफिसर ने
जरिए अधिसूचना संख्या एन. 21011/30/86—डी.
III (बी) दिनांक 23-6-87 निम्न विवाद अंतर्गत धारा
10(I-डी). एवं धारा 10 (2-डी) औद्योगिक विवाद
अधिनियम 1947 जिसे तत्पश्चात् अधिनियम कड़ा जाएगा,
वास्ते अधिनियम इस न्यायाधिकरण को प्रेषित किया है।

"Whether demand numbers 1 to 5 and 14 contained
in 15 point charter of demand number 188/1986
dated 7-5-86 (Copy enclosed) submitted by Rash-
triya Mazdoor Sangh, Ramgang Mandi, Kota,
Rajasthan are justified? If yes, what relief are
employees entitled to?"

मांग पत्र

1. यह कि आपके खदान में कार्यरत सभी कारीगर
(स्टोस कटर) को 107 वर्ग फुट पत्थर कटार्ड पर 20/—
रुपये भुगतान किये जाए।

2. यह कि आपकी खदान में कार्यरत सभी कुली,
बेलदारों को 15/—रुपये प्रति दिन के हिमाव से मजदूरी
का भुगतान की जाए।

3. यह कि आपकी खदान पर कार्यरत सभी कर्म-
चारियों को औसत कमाई के हिमाव से मंहगाई भत्ता
दिया जाये या जिस कर्मचारी को 1000/—रुपये तक वेतन
मिलता था रहा है उनकी 80/—रुपये की वेतन वृद्धि
की जाये तथा जिस कर्मचारी को एक हजार से अधिक वेतन
मिल रहा है उसे 100/—राये की वेतन वृद्धि दी जाए।

4. यह कि सभी श्रमिकों व कर्मचारियों को 12
केजुअल कम सिक लीव दी जाए।

5. यह कि आगामी वर्ष में श्रमिक हेतु एक बस भेजी
जावे जो श्रमिक भ्रमण में जो उनको आन ड्यूटी
भेजा जावे तथा पूरे खर्चें वहन किये जाए।

6. यह कि सभी श्रमिकों व कर्मचारियों को मेडिकल
बिल पास किये जाए।

7. यह कि सन 1984-85 का बोनस 15 प्रतिशत
की दर से भुगतान किया जाए।

8. यह कि खदान में कार्यरत सभी कर्मचारियों को
को रक्षा बन्धन की सवेतनिक छुट्टी दी जाए।

9. यह कि खदान पर नो लोस न प्रोफिट पर आपके
द्वारा केन्टीन चालू किया जाए।

10. यह कि आपको खदान तहरावदा पर पूरे समय
के लिए एक डाक्टर. कम्पाउण्डर व नर्स की नियुक्ति दी
जावे।

12. खदान में कार्यरत सभी श्रमिकों व कर्मचारियों को माईन्स एक्ट के अनुसार जूते चप्पे व हेलमेट दिये जावें।

13. आपकी खदान पर नो लोस नो प्रोफिट में कोआपरेटिव स्टोर खोला जाए जिसके माध्यम से सभी श्रमिकों व कर्मचारियों को खाद्य सामग्री उपलब्ध हो सके।

14. खानों पर मैनेजर, फोरमैन, मुस्त्रियों सुपरवाइजर्स व पानी वालों को एक माह की पी. एल. व 20 दिन की सी. एल. छुट्टियां दी जावें।

15. खान सहराबवा पर एक आधुनिक कालोनी का निर्माण किया जावे।

बाद प्राप्ति निर्देशन, इसे न्यायालय हाजा में पंजीकृत किया गया। और उभय पक्षकारान को नोटिस दिये गए। राष्ट्रीय मजदूर संघ रामगंजमण्डी जिसे तत्पश्चात संघ लिखा जाएगा, की ओर से श्री सीताशरण देवलिया उपस्थित आए। जिन्होंने लिखित में यह पेश किया कि इस विवाद के संबंध में जो मांग पत्र संघ ने नियोजक को प्रस्तुत किया था वह मांगपत्र काफी पुराना था और उन मांगों में से अधिकांश मांगें पूरी हो चुकी हैं और मौजूदा परिस्थिति श्रमिकगण की मांगों में मांगी गई राशि से अधिक राशि का भुगतान किया जा रहा है। इस कारण से पूर्व में रखे गए मांगों के संबंध में प्रार्थी-गण कोई क्लेम प्रस्तुत करना नहीं चाहते हैं। अतः इस विवाद के संबंध में नो डिस्पूट अवार्ड पारित किया जाए। इस प्रकार की तहरीर से पूर्व प्रार्थी यूनियन को स्टेटमेंट आफ क्लेम पेश करने के लिए नौ अवसर दिये गए परन्तु कोई क्लेम नहीं किया गया। अब संघ की ओर से जो लिखित में प्रार्थना पत्र पेश किया गया है, इससे यह विदित है कि प्रार्थी संघ का कोई विवाद अप्रार्थी नियोजक पक्ष यानि प्रेसिडेंट एंव सैक्रेटरी, मै. ईस्ट सुकेत श्रमिक ठेका पाषाण सहकारी समिति लि. पोस्ट सुकेत (कोटा) से नहीं रहा है। यूंकि कोई विवाद शेष नहीं रहा है इसलिए निर्देशन के सम्बन्ध में नो डिस्पूट अवार्ड पारित किया जाता है। पंचाट की प्रति अंतर्गत धारा 17(1) औद्योगिक विवाद अधिनियम केन्द्रीय सरकार, श्रम मंत्रालय को वास्ते उचित कार्यवाही भेजा जाए।

अपठनीय-न्यायाधीश

[सं. एल —21011/30/86-डी III(बी)]

का. आ. 3132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जमील अहमद पठान, असाकाली लाईम स्टोन माईन्स के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/9/88 को प्राप्त हुआ था।

S. O. 3132.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Jamil Ahmad Pathan, Asakali Lime Stone Mines and their workmen, which was received by the Central Government on the 22nd September, 1988.

औद्योगिक न्यायाधिकरण, जयपुर

केस नं. एन. सी. आई. टी. 30/87

रेफरेन्स: भारत सरकार श्रम मंत्रालय, नई दिल्ली को आज्ञा क्रमांक 29011/24/85-सी. III (बी) दिनांक 19-6-87

महामंत्री, राष्ट्रीय मजदूर संघ, (इंटक) रामगंज मण्डी जिला कोटा (राजस्थान)
बनाम

मैसर्स जमील अहमद पठान, असाकाली लाईम स्टोन माईन्स, पी. ओ. दावादेह, तहसील रामगंज मण्डी, जिला कोटा (राजस्थान)।

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव,

आर. एच. जे. एस.

प्रार्थी यूनियन की ओर से : श्री सीता शरण देवलिया

अप्रार्थी नियोजक की ओर से : कोई हाजिर नहीं

अवार्ड दिनांक : 29-7-88

अवार्ड

भारत सरकार, श्रम मंत्रालय, नई दिल्ली में अपनी उप-रोक्त अविस्मृता द्वारा निम्न विवाद इस अधिकरण को वास्ते अधिनिर्णय प्रेषित किया है :

"Whether the demand No. 1 and 2 of the piece rated workers and daily time rated workers for increase in wages w.e.f. 1-10-84 as given in Annexure employed by Shri Jamil Ahmad Pathan, Asakali Lime Stone Mines, P.O. Davadeh are justified? If not, to what relief the workmen are entitled?"

ANNEXURE

Demand No. 1 : Stone Cutters (Piece Rated Miners) should be paid Rs. 20 for 107 Sq. Feet of stone Cutting w.e.f. 1-10-84.

Demand No. 2 : Daily Rated Workers (Beldar, Coolies and Mazdoor) engaged in the open cast Lime Stone Mines on the above Ground of the employer should be paid Rs. 15 per day w.e.f. 1-10-84."

बाद प्राप्ति निर्देशन, इसे न्यायालय हाजा में पंजीकृत किया गया और उभय पक्षकारान को नोटिस दिए गए। राष्ट्रीय मजदूर संघ रामगंज मण्डी जिसे तत्पश्चात संघ लिखा जाएगा, की ओर से श्री सीता शरण देवलिया उपस्थित आए जिन्होंने लिखित में यह पेश किया कि इस विवाद के सम्बन्ध में जो मांगपत्र संघ ने नियोजक को प्रस्तुत किया था वह मांग काफी पुरानी थी। और उन मांगों में से अधिकांश

मांगे पूरी हो चुकी हैं और मौजूदा परिस्थिति में श्रमिक गण को मांगों में मांगी गई राशि से अधिक राशि का भुगतान किया जा रहा है। इस कारण से पूर्व में रखे गए मांगों के सम्बन्ध में प्रार्थी गण कोई क्लेम प्रस्तुत करना नहीं चाहते हैं। अतः इस विवाद के सम्बन्ध में नो डिस्प्यूट अवार्ड पारित किया जाए। इस प्रकार की तहरीर से पूर्व प्रार्थी यूनियन को स्टेटमन्ट आफ क्लेम पेश करने के लिए 6 अवसर दिए गए परन्तु कोई क्लेम पेश नहीं किया गया। अब मंच की ओर से जो लिखित में प्रार्थना पत्र पेश की गई है, इससे यह विदित है कि प्रार्थी संघ का कोई विवाद अप्रार्थी नियोजक पक्ष यानि मैसर्स आसाकाली लाइम स्टोन माईन्स, पोस्ट दाबादेह तहसील रामगंज मण्डी जिला कोटा से नहीं रहा है। चूंकि कोई विवाद शेष नहीं है इसलिए इस निर्देशन सम्बन्ध में नो डिस्प्यूट अवार्ड पारित किया जाता है। पंचाट को प्रति अंतर्गत धारा 17(1) औद्योगिक विवाद अधिनियम, केन्द्रीय सरकार, श्रम मंत्रालय को वास्ते उचित कार्यवाही भेजी जाए।

अपठनीय - न्यायाधीश

[नं. एल.—29011/24/85-डी.-II (वी)]

नई दिल्ली, 7 अक्टूबर, 1988

का. आ. 3133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार (1) श्री बद्री प्रसाद खेमका, मालिक, मुन्वली स्टोन माईन्स, मिरजा चौकी, एस. पी. (बिहार) (2) श्री बिजय कुमार खेमका, मालिक, वीलेहदरी स्टोन माईन्स, (3) मैसर्स इन्टरनेशनल ओवरसीड्स कारपोरेशन (4) मै. सिन्हा एण्ड सन्स (5) मै. जैन चीना क्ले माईन्स पो. ओ. राजमहल (6) मैसर्स विकटर माइनिंग इन्डस्ट्रीज, के प्रबन्धतंत्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1 धनबाद के पंचापट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-88 को प्राप्त हुआ था।

New Delhi, the 7th October, 1988

S. O. 3133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1 Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of :

1. Shri Badri Prasad Khemka
2. Shri Bijay Kumar Khemka
3. M/s. International Overseas Corporation
4. M/s. Sinha & Sons
5. M/s. Jain China Clay Mine
6. M/s. Victor Mining Industry.

and their workmen, which was received by the Central Government on the 27th September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 32 of 1984

PARTIES :

Employers in relation to the managements mentioned in the annexure.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra,
Presiding Officer.

APPEARANCES :

For the Employers.—Shri S. S. Mukherjee, Advocate.

For the Workmen.—None.

STATE : Bihar.

INDUSTRY : Stone.

Dated, the 21st September, 1988

AWARD

By Order No. L-29011/1/84-D.III(B), dated, the 18th June, 1984, the Central Government in the Ministry of Labour has in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication :

"Whether the demand of the workmen of six employers mentioned in the Annexure for payment of bonus at the rate of 20 percent for the accounting year 1982-83 is justified? If so, to what relief are the workmen concerned entitled?"

ANNEXURE

1. Shri Badri Prasad Khemka, Owner, Mundli Stone Mine, Mirzachouki, S. P. (Bihar).
2. Shri Bijay Kumar Khemka, Owner, Belhadari Stone Mine, Mirzachouki, S. P. (Bihar).
3. M/s. International Overseas Corpn. Mirzachouki, Dist. Sahibganj (Bihar).
4. M/s. Sinha & Sons, Mirzachouki, Dt. Sahibganj, (Bihar).
5. Ms. Jain China Clay Mine, P. O. Rajmahal, Dt. Sahibganj (Bihar).
6. M/s. Victor Mining Industry P. O. Kajmahal, Dt. Sahibganj (Bihar).

2. It appears that the General Secretary, Quarries Workers Union, P. O. Pakur, Dist. Sahibganj (Bihar) raised the present industrial dispute. In spite of issuance of several notices calling upon the union to appear and submit the written statement neither the union nor its General Secretary nor the concerned workmen appeared and submitted their written statement in support of the claim. However, it appears from the terms of reference that the workmen claiming to be working under these employers, namely (1) Badri Prasad Khemka, (2) Bijay Kumar Khemka, (3) M/s. International Overseas Corporation, (4) M/s. Sinha & Sons, (5) M/s. Jain China Clay Mine and (6) M/s. Victor Mining Industry, raised the demand for payment of bonus at the rate of 20 percent for the accounting year 1982-83.

3. None of the employers except the management of Jain China Clay Mine appeared and submitted written statement in refutation of the claim of the workmen.

The case of the management of M/s. Jain China Clay Mines Pvt. Ltd., as appearing from the written statement submitted, is as follows :

There exists no mine as Jain China Clay Mine, M/s. Jain China Clay Mines Pvt. Ltd. are the owner of Rajmahal clay and Silica Sand Mines situated at village Kaswa, Post Office Mangalhat English (Via Taljhari), Dist. Sahabganj (Bihar). The present dispute was not directly raised with the employer and as such the reference is incompetent in law. Besides there are as many as six different managements and a common reference for all of them also is bad in law. The Quarries Workers Union, Pakur, Sahabganj is neither the representative nor a recognised union of the management. The establishment of Rajmahal Clay & Silica Sand Mines did not derive such profit in the accounting year 1982-83 as to pay 20 per cent bonus and so the present claim for bonus is not maintainable under the Payment of Bonus Act. As a matter of fact the concerned workmen numbering 30 were paid bonus at the rate of 8.33 percent during the accounting year 1982-83 in accordance with the provisions of payment of Bonus Act. In the circumstances the demand of the union is only speculative and not maintainable in law.

4. The management of Jain China Clay Mines Pvt. Ltd. has examined only one witness and he is W-1 A. K. Sengupta, Administrative Officer of the Company and laid in evidence Form B Register for the year 1982-83 maintained as per provisions of Payment of Bonus Act and this document has been marked as Ext. M-1.

5. It appears that as many as six employers have been lumped together in the present reference though there appears to be no community of interest amongst them. This being so, it must be held that the present reference suffers from infirmity of multifariousness.

6. The management of Jain China Clay Mines Pvt. Ltd. has striven to refute the demand of the concerned workmen by raising technical as well as substantive defence. I have dealt with one of the technical defences taken by the management. It appears that the management has examined MW-1 A. K. Sengupta and laid in evidence Form B Register in order to refute substantive demand of the workmen for payment of bonus at the rate of 20 percent for the accounting year 1982-83. Sri Sengupta has stated that he has been posted as Administrative Officer of M/s. Jain China Clay Mines Pvt. Ltd. and that he has been working there for last 31 years. It appears from his evidence that the company was the owner of Rajmahal Clay & Silica Sand Mines and that no union under the name and style of Quarry Workers Union operates in their mines nor has such union submitted any demand or notice of demand for any of its workers. He has stated that Form B Register marked Ext. M-1 is maintained in regular course of business and that during the year 1982-83 the allocable surplus was Rs. 12,665.00. He has further stated that during the period as aforesaid they have paid bonus at the rate of 8.33 percent to their workers and that their total expense on bonus head aggregated to Rs. 13,039.00 and that their concern is not financially viable to pay bonus at the rate of 20 percent. He has stated firmly that the demand of the workmen for bonus at the rate of 20 percent for the accounting year 1982-83 is not justified. Form B Register (Ext. M-1) maintained by the management in regular course of business establishes the fact that during the year 1982-83 the amount of allocable surplus as bonus was Rs. 12,665.00. This evidence of Sengupta with regard to amount allocable as bonus for the year 1982-83 is supported by Form B Register (Ext. M-1). That the company paid Rs. 13,039.00 as bonus at the rate 8.33 percent during the year 1982-83 to its workmen as stated by Sengupta is also supported by Form B Register (Ext. M-1). There is no contra evidence on these points. There is no evidence also to indicate that the company was financially sound enough to pay its workmen bonus at the rate of 20 percent. That being so, I come to the inescapable conclusion that the demand of the workmen to the reference for payment of bonus at the rate of 20 percent for the accounting year 1982-83 is not justified.

7. Accordingly, the following award is made—the demand of the workmen of six employers, namely, (1) Badri Prasad Khemka, (2) Bijay Kumar Khemka, (3) M/s. International Overseas Corporation, (4) M/s. Sinha & Sons, (5) M/s. Jain China Clay Mine and (6) M/s. Victor Mining Industry, mentioned in the Annexure to the reference for payment

of bonus at the rate of 20 percent for the accounting year 1982-83 is not justified.

In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer

[No. L-29011/1/84-D.III(B)]

V. K. SHARMA, Desk Officer

नई दिल्ली, 4 अक्टूबर, 1988

का. आ. 3134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व अद्वेय -II (एन.) कोलियरी मैसर्स ईस्टर्न कोलफील्ड्स लि. के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-88 को प्राप्त हुआ था।

New Delhi, the 4th October, 1988

S.O. 3134.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Adjai-II(N) Colliery of M/s. Eastern Coal fields Ltd. and their workmen, which was received by the Central Government on the 23rd September, 1988.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 10 of 1987

PARTIES :

Employers in relation to the management of Adjai-II(N)
Colliery of M/s. Eastern Coalfields Limited.

AND

Their Workmen

APPEARANCES :

On behalf of Employer.—Mr. P. Banerjee, Advocate.

On behalf of Workmen.—None.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012/38/86-D.IV(B) dated 31st December, 1986, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the assessment of year of birth of Shri Sambhu Bouri, Winding Engine Driver, Adjai-II-(N) Colliery of M/s. E.C. Ltd., as 1925 was justified? If not, to what relief the workman is entitled?"

2. The case is called out. Nobody appears on behalf of the Union in spite of the service of notice upon the Union by registered post as per the Order dated 11-7-1988. No intimation has also been sent to this Tribunal by the Union. It appears from the record that the Union did not also appear on 11-7-1988 and on 27-4-1988 and no intimation was also sent to this Tribunal about their absence, although the notices of the Reference were served upon them duly

by registered post in pursuance of the Tribunal's Order dated 18-3-1988 and 27-4-1988 respectively.

3. It appears that the Union is not interested with the reference. In the circumstances the Tribunal cannot give any other adjournment and issue the notice upon the Union once again at the expense of the Government when notices already served upon it by registered post twice could not bring the Union before the Tribunal. In the circumstances there is no other alternative but to pass the 'No Dispute Award' and accordingly I do so.

This is my Award.
The 15th September, 1988.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-19012/38/86-D.IV(B)]

का. आ. 3135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व वेस्टर्न कोलफील्ड्स लि., वार्धा वैली क्षेत्र सब जेरिया। न्यू माजरी कोलियरी के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-88 को प्राप्त हुआ था ।

S.O. 3135.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. II, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. W.C. Ltd., Wardha Valley Area in sub Area No. I, New Majri Colliery and their workmen, which was received by the Central Government on the 22nd September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, BOMBAY

Reference No. CGIT-2/5 of 1986

PARTIES :

Employers in relation to the management of Western Coalfields Ltd.

AND

Their Workmen

APPEARANCES :

For the Employers.—Shri A. K. Sasi, Advocate.
For the Workmen.—No appearance.

STATE : Maharashtra INDUSTRY : Coal Mines.

Bombay, dated the 12th September, 1988

AWARD

The Central Government by their Order No. L-22012(29)/85-D.V. dated 6th February, 1986 has referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the management of M/s. Western Coalfields Limited, Wardha Valley Area in Sub Area No. I, New Majri Colliery, P. O. Shivaji Nagar, Distt. Chandrapur (MS) is justified in striking off the names of the following five workmen from the rolls with effect from 11-8-1984 ?"

1. Shri Ramchandra Rajwansi
2. Shri Prangopal Tapedar
3. Shri Shankar Suryabhan
4. Shri Shankar Sitaram
5. Shri Janba Mohan Mavalikar."

"If not, to what relief these workmen are entitled to ?"

2. Pending this reference both the parties arrived at an amicable settlement and filed their terms of settlement which are thus :—

"1. Shri Ramchandra Rajwansi and four others will be given fresh re-employment as Casual Loader within a month of an Award of Tribunal in Sub Area-I.

2. The Union will give up all their claims including claim for back wages, reinstatement and all other benefit and accept fresh re-employment in full and final settlement of all their claims in respect of these ex-workmen.

3. The Union will not claim any other relief and treat this settlement as full and final settlement of all their claims.

4. The parties shall submit the copies of the settlement to the Tribunal and pray for an award in terms of settlement."

The said settlement has been signed by the Union representative Shri R. C. Pandey, General Secretary, R.V.C.E.U., Chandrapur and by the Personal Manager of the said management.

3. I find that the said settlement is quite in the interests of the said workmen, and as such, I accept it. Hence, Award must be and is drawn in terms of the said settlement.

Award accordingly.

P. D. APSHANKAR, Presiding Officer

[No. L-22012/29/85-D.D.V]

का. आ. 3126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैसर्स वेस्टर्न कोलफील्ड्स लि. की लालपेथ कोलियरी के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2, बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-88 को प्राप्त हुआ था ।

S.O. 3136.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Hindustan Lalpeth Colliery of M/s. W.C. Ltd., and their workmen, which was received by the Central Government on the 22nd September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, BOMBAY

Reference No. CGIT-2/57 of 1987

PARTIES :

Employers in relation to the management of M/s. Western Coalfields Limited (Hindustan Lalpeth Colliery).

AND

Their Workmen

APPEARANCES :

For the Employers.—Shri A. K. Sasi, Advocate.

For the Workmen.—Shri G. V. R. Sarma, Organising Secretary, RKKMS (INTUC), Chandrapur.

INDUSTRY : Coal Mines. STATE : Maharashtra.

Bombay, dated the 9th September, 1988

AWARD

The Central Government by their Order No. L-21012/78/87-D.III(B) dated 9-11-1987 has referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the management of Hindustan Lalpeth Colliery of M/s. Western Coalfields Limited is justified in denying employment to Smt. Amrutabai, wife of Late Shri Puppala Pocha Malla Yellayya w.e.f. 2-2-1984 ? If not, what relief the workman concerned is entitled to ?"

2. Pending this reference, both the parties arrived at an amicable settlement, and filed their consent terms of settlement which are thus :—

"1. That Smt. Amrutabai, wife of Late Puppala Pocha Mella Yellaya will be offered appointment as General Mazdoor Category I (one) under NCWA-III with initial Basic Pay within one month from the date of the Award of CGIT in terms of this settlement. This appointment will be subject to medical fitness to be certified by the Company's Doctor.

2. On appointment Smt. Amrutabai will be posted at Hindustan Lalpeth and will be transferable to any other place in the company.

3. That she will be on probation for six months from the date of appointment.

4. This settlement fully and finally resolves the dispute pending before the CGIT, Bombay.

5. The parties agreed to file this compromise settlement before the Presiding Officer, CGIT, Bombay and request for a consent award in terms of this settlement."

The above said settlement has been signed by the Organising Secretary of RKKMS (INTUC), Chandrapur, and by the Sub-Area Manager, Hindustan Lalpeth Sub Area. It also bears the thumb impression of the above lady Smt. Amrutabai.

3. I find that the above settlement is quite in the interest of the said workman, and as such, I accept it. Hence Award must be and is drawn in terms of the settlement.

Award accordingly.

P. D. APSHANKAR, Presiding Officer

[No. L-21012/78/87-D.III(B)]

का. आ. 3137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व वेस्टर्न कोलफील्ड्स लि., सब ऐरिया नं. 6 महाकाली कोलियरी के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 2, बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-88 को प्राप्त हुआ था।

S.O. 3137.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of W.C. Ltd. Sub Area No. IV Mahakali Colliery and their workmen, which was received by the Central Government on the 16th September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/1 of 1988

PARTIES :

Employers in relation to the management of Western Coalfields Limited.

AND

Their Workmen.

APPEARANCES :

For the Employers : Shri A. K. Sasi, Advocate.

For the Workmen : Shri G. V. R. Sarma, Organising Secretary, RKKMS, Chandrapur.

INDUSTRY : Coal Mines. STATE : Maharashtra.

Bombay, dated the 1st September, 1988

AWARD

The Central Government by their order No. L-21012/23/86-D.III(B) dated 21-12-1987 has referred the following industrial dispute for adjudication to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the management of M/s. Western Coalfields Ltd., in Sub Area No. VI, Mahakali Colliery, Post Office and District Chandrapur (MS) is justified in stopping from duties of the workman Shri Baburao Baliram Buradkar with effect from 31-3-84 and denying the workman to place under NCWA-III Pay-scales? If not, to what relief the workman concerned is entitled ?"

2. Pending this dispute both the parties arrived at an amicable settlement and they filed the consent terms of settlement which are thus :—

"1 That Shri Baburao Baliram Buradkar will be offered fresh employment as General Mazdoor, Cat. I under NCWA-III with starting Basic or Cat. I within one month from the date of award by CGIT subject to medical fitness to be certified by Company's Doctor.

2. That the period of idleness will be treated as dies-non.

3. That the workman will not be entitled to wages of any other payment whatsoever for the period of idleness from the date of his alleged stoppage from work to the date of joining after offer of fresh employment as per this settlement.

4. On fresh employment, the workman will be kept on probation for a period of six months.

5. After offer of appointment and medical fitness, if so declared, he shall be posted in any of the mines/collieries under Chandrapur Area.

6. This settlement fully and finally resolves the dispute pending before the CGIT-2, Bombay.

7. The parties agreed to file this compromise settlement before the Presiding Officer, CGIT-No. 2, Bombay immediately and request for consent award in terms of this settlement, as the same are fair.

3. The said settlement has been signed by the said workman Shri Baburao Baliram Buradkar and by the Organising Secretary of R.K.K.M.S. (INTUC) of which he is a member and also by the Sub Area Manager, Sub Area No. VI (Rayatwari SA), Chandrapur Area of the said management.

4 I find that this settlement is quite in the interests of the said workman and as such I accept the same. Hence award must be and is drawn in terms of the said settlement.

Award accordingly.

P. A. APSHANKAR, Presiding Officer

[No. L-21012/23/86-D.III(B)]

नई दिल्ली, 6 अक्टूबर, 1988

ANNEXURE 'A'

का. आ. 3138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैसर्स ई. सी. लिम. की पांडावेश्वर कोलियरी पांडावेश्वर क्षेत्र के प्रबन्धतंत्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-88 को प्राप्त हुआ था।

New Delhi, the 6th October, 1988

S.O. 3138.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Pandaveswar Colliery under Pandaveswar Area of M/s. E. C. Ltd., and their workmen, which was received by the Central Government on the 23rd September, 1988.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No 89 of 1988

PARTIES :

Employers in relation to the management of Pandaveswar Colliery under Pandaveswar Area of Eastern Coalfields Ltd., P.O. Pandaveswar, Distt. Burdwan.

AND

Their workmen.

APPEARANCES :

On behalf of employers : Mr. D. S. Das, Enquiry Officer of the Colliery.

On behalf of workmen Mr. A. Singh, an office bearer of the Union.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012(163)/86-D.IV(B) dated 16-6-1987, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the management of Pandaveswar Colliery under Pandaveswar Area of Eastern Coalfields Ltd., P.O. Pandaveswar, Distt. Burdwan, was justified in not allowing promotion to Sri K. C. Agarwal, Bill Clerk (Gr. II) to Gr. I from 15-12-1982, the date his juniors were promoted? If not, to what relief the workman is entitled and from what date?"

2. When the case is called out today, Mr. D. S. Das, Enquiry Officer of the Colliery appears for the management and draws my attention to the petition of compromise filed on 13-7-1988 by the parties. He prays for an Award in terms of the Joint Petition of Compromise. Considered the Joint Petition of Compromise. The terms of the Joint Petition of Compromise appear to be fair, reasonable and in the interest of the parties. I therefore, accept the same and pass an 'Award' in terms of the said Joint Petition of Compromise which do form part of this Award as Annexure 'A'.

This is my Award.
Dated, Calcutta,
The 15th September, 1988.

[No. L-19012/163/86-D.IV(B)]

SUKUMAR CHAKRAVARTY, Presiding Officer

2544 GI/88—4.

Memorandum of settlement arrived at between the management of Paniaveswar Colliery E.C.L. P.O. Paniaveswar, Distt. Burdwan and their workmen represented by Koyala Mazdoor Congress (HMS) on 12-1-1988.

Representing Employers :

1. Sri S. J. Singh,
Dy. Chief Personnel Manager.
ECL Paniaveswar Area,
Paniaveswar.
2. Sri D. K. Sinha,
Dy. Personnel Manager.
Paniavaswar Area.

Representing Workman :

1. Sri S. K. Pandey,
Secretary,
Koyala Mazdoor Congress (HMS),
Paniaveswar.

Short recital of the case :

The Secretary, Koyala Mazdoor Congress (HMS) raised on Industrial Dispute vide letter No. KPC : IND. D-1 : 5-A : 83 dt. 1-11-86 before the Asst. Labour Commissioner (C) Raniganj over the matter of discrimination in the matter of promotion in respect of Sri K. C. Agarwal, clerk although clerks Junior to him were promoted from Gr. II to Gr. I. The conciliation proceeding ended in failure. Inturn the Ministry of Labour, New Delhi Vide their letter No. L-19012(163) : 86 : D-IV(B) dt. 16-6-87 informed the management that the Central Government referred the dispute for adjudication before the Central Government Industrial Tribunal, Calcutta under order dated New Delhi.

During the pendency of the reference before the Central Government Industrial Tribunal Calcutta mutual discussions were held with the Secretary, Koyala Mazdoor Congress (HMS). After protracted discussion, the dispute was resolved in terms and conditions as follows :

Terms of settlement :

1. It is agreed that Sri K. C. Agarwal, Clerk Gr. II shall be promoted to Gr. I with effect from 1-12-1987.
2. Agreed that no financial benefit, what so ever will be allowed by the management to Sri Agarwal nor he shall claims any financial benefit at any point of time in future.
3. Agreed that Sri Agarwal shall not claim any notional seniority for his promotion from Gr. II to Gr. I
4. It is agreed that this is an over all settlement in respect of the Industrial Dispute under reference pending before the Central Govt. Industrial Tribunal, Calcutta and the Honourable Tribunal is being prayed for passing an award in terms of the settlement indicated herein viz clause 1 : 2 : 3

Representing Employers :

- Sd/-
1. Sri S. J. Singh,
Dy. Chief Personnel Manager,
Pandaveswar Area.
Sd/-

2. Sri D. K. Sinha,
Dy. Personnel Manager,
Paniaveswar Area

Witness :

- Sd/-
1. Sri K. C. Agarwal,
Clerk, Grade II,
Paniaveswar Colliery.

Representing Workmen :

- Sd/-
1. Sri S. K. Pandey,
Secretary,
Koyala Mazdoor Congress (HMS),
Pandaveswar (Burdwan).

नई दिल्ली, 7 अक्टूबर, 1988

का. आ. 3139—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य निगम, पटना के प्रबन्धनन्त के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण में. 2, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-88 को प्राप्त हुआ था।

New Delhi, the 7th October, 1988

S.O. 3139.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India, Patna and their workmen, which was received by the Central Government on the 28th September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

REFERENCE No. 295 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Food Corporation of India, Patna and their workmen.

APPEARANCES :

On behalf of the workmen : Shri V. Kumar,
District Secretary, FCI Executive Staff Union.

On behalf of the employers : Shri P. S. Mishra,
Dy. Manager.

STATE : Bihar.

INDUSTRY : Food.

Dhanbad, the 22nd September, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-42011/17/86-D.II(B), dated, the 14th August, 1987.

SCHEDULE

"Whether the action of the Senior Regional Manager, Food Corporation of India, Patna in holding re-test on 5-10-85 in respect of all the 33 candidates (names contain in Annexure V and VI) is in order? If not, to what relief are the workmen concerned entitled to?"

The case of the workmen is that the concerned 33 workmen were appointed in Food Corporation of India by the Senior Regional Manager, Bihar Region Patna. Out of those 33 concerned workmen, 8 of the concerned workmen were appointed as Stenographers in Grade-II and the rest were appointed as Typists. They were appointed by Shri M. M. Kohli, Senior Regional Manager, who was the appointing authority of the workmen under the FCI Staff Regulations, 1971. The concerned workmen were selected by the Selection Board for appointment after test and interview and thereafter order for appointment was issued to each of the concerned workmen. The concerned workmen were discharging their duties to the full satisfaction of their different controlling officers where they were posted under the different District Manager/Dy. Manager of Bihar Region. After appointment against regular posts they were placed on probation for a period of one year. During the period of probation, after expiry of 6 months, satisfactory probation reports were submitted by the concerned District Manager/Dy. Manager to the Senior Regional Manager. According to the workmen they were all appointed against regular and sanctioned vacancies. 6 of them were appointed by the Senior Regional Manager on 5-5-84, 5 concerned workmen were appointed on 25-1-85 as Stenographer Grade-II and the rest were appointed as Typists on 30-5-85 and 6-6-85. Subsequently on 11-9-85 letter was issued to each of the concerned workman under the signature of Shri P. S. Mishra, Dy. Manager (Personnel) directing them to attend FCI Regional Office Patna on 5th October 1985 for appearing to the re-test for typing

Stenography test. There is no provision under FCI regulation for holding re-test. The said action of the management was protested by the union and also by individual workman. Under protest 29 of the concerned workmen out of 33 appeared in the re-test, 4 of the concerned workmen did not appear as they were on leave due to sickness on the date of re-test. The allegation of the management that several complaints were received from the representative of the staff bodies and others against the appointment of the concerned workman is not correct. As there was no complaint against the workmen about their appointment the decision of holding re-test was illegal void and without jurisdiction as there was no provision for re-test in FCI Regulation, 1971 by which the services of the concerned workmen were governed. Four of the concerned workman as stated above had not appeared in the re-test and it is not understood as to why their services were terminated along with the persons who had appeared in the re-test. The management had sought for the legal opinion from Dy. Manager, Legal as well as from the Standing Counsel of the Hon'ble High Court, Patna and both of them gave their opinion that there was no provision in the FCI regulation for holding re-test and as such the re-test is not in order. There was no condition in their appointment letter that the concerned workmen will be put to re-test after appointment. The re-test was not a condition of service even if adverse reports were received against them by their controlling officer as there is a clear provision laid down under Circular No. 38 of 1979 issued by the FCI headquarters wherein it is provided that if the first half yearly probationary report reveals that the probationer's work is not satisfactory he should immediately be placed either in a different seat under different officer for the rest of the probationary period and also that such a probationer should be informed in writing of his shortcomings well before the expiry of the original probationary period so that the workman can make efforts for his improvement. On 7th May, 1986 a common order discharging the services of the concerned workmen with effect from 8th May, 1986 as per the provision of Rule 15(3) of FCI Staff Regulation, 1971 was issued to the concerned workmen along with one month's pay by Shri P. K. Thakur, Joint Manager (Commercial) who was deputed on duty to Patna to perform the current duty of Senior Regional Manager and function as Senior Regional Manager, Incharge. The discharge order passed by Shri P. K. Thakur, Joint Manager as Incharge, Senior Regional Manager was passed by an Officer who was lower in rank than the appointing authority and was a clear violation of Regulation 19(3) of FCI Staff Regulations, 1971. The concerned workmen were discharged, without complying with the provisions of Industrial Dispute Act and they were not paid compensation nor the management had taken permission from the appropriate Govt. before passing the order of discharge. Admittedly, the concerned workmen have been discharged on the basis of the re-test which is illegal and without jurisdiction and as such their discharge from service on the basis of the re-test is also illegal without jurisdiction and void ab initio. The Writ petitions and SLP filed before the Hon'ble High Court and the Supreme Court were dismissed in view of the pendency of the Industrial dispute. The Hon'ble Courts dismissed the Writ petitions/SLP without considering the merit of

the case. The writ petitions were disposed of in limine without passing speaking order and as such the said order of dismissal did not create a bar of resjudicata in the present reference as is being raised on behalf of the management. Shri P. K. Thakur, Joint Manager who had passed the order of discharge of the concerned working was empowered only to perform non-statutory function of senior Regional Manager, FCI Patna as Senior Regional Manager Incharge and had got no statutory powers which will appear clear from Circular No. 34 dated 23-12-1982. In the said circular it is stated that an Officer appointed to perform the current duty of an officer can exercise the administrative or financial powers vested in the fulfilled incumbent of the post but cannot exercise statutory powers. It would thus show that Shri P.K. Thakur who was holding current charge did not automatically become a fulfilled incumbent as Senior Regional Manager. A Joint Manager had no authority to pass an order of discharge as he was subordinate in rank to Shri M.M. Kohli, Senior Regional Manager who was the appointing authority. The Senior Regional Manager, FCI Patna was delegated with the power of appointing authority and disciplinary authority in respect of the concerned workmen for Bihar Region and the said power was delegated to him by the Board under Section 37 of the FCI Act, 1954 as all the original powers are vested in board. The powers and function of the board can be delegated by the board to Zonal Manager, Senior Regional Manager, Regional Manager, Joint Manager, or any officer. The Zonal Manager or any officer has got no power to delegate the powers of Senior Regional Manager to any other authority as has been done in the case of Shri P. K. Thakur, Joint Manager. In view of the fact that the concerned workmen had discharged their duties to the satisfaction of their superior offices during the period of their probation the management ought to have served with a show cause notice before an order of discharge was passed against them. Failure to afford opportunity to show cause before the discharge of the concerned workman was unconstitutional.

It is admitted by the management that the persons concerned in this reference are their workmen. They have already worked more than 240 days in a year. The management was bound to comply with the mandatory provision of Section 25F of the I.D. Act and they should have been paid compensation besides permission was necessary from appropriate Govt. before passing the order of discharge against them. The management neither took permission from the appropriate Government nor any compensation was made to them as such the order of discharge is quite illegal and void and is fit to be set aside. On the above facts it is prayed that an Award be passed in favour of the concerned workman declaring the re-test as illegal, without jurisdiction, void ab initio and they should be reinstated with full back wages.

The case of the management is that the concerned workmen were placed on probation for a period of one year and the said period of probation was liable to be extended for further period of one year in terms of FCI Staff Regulation 15(2). After the appointment of the concerned workmen in the year 1984-85 as Typists/Stenographers several complaints were received from the representatives of the Staff

Bodies and others against the concerned workmen alleging inefficiency, favouritism, corruption and irregularities in recruitment of Typists and Stenographers Grade-II. It was thereafter decided to retest the concerned workmen to find out if they have eligible qualifications, namely, they require speed of typing stenography etc. A committee comprising of officers from FCI, CBI and Central Ware Housing Corporation were constituted and all the 33 concerned workmen were directed to appear in the re-test on 5-10-85. Out of them 4 candidates namely S/Shri Arun Kumar Singh, Robin Kumar Sinha, Suhail Azam and Sukesh Pd. Singh did not appear for re-test before the said Committee. Out of 29 persons who appeared for re-test before the Committee, only two candidates namely Shri Francis Xavier Lobo and P. C. Tewary were found suitable at the re-test as the concerned workmen were on probation and were found not to have minimum eligible qualifications as per FCI Staff Regulations which is statutory in nature. Their services were discharged with effect from 8-5-1986 under Regulation 15(3) of FCI Staff Regulations, 1971. The opinion of the Dy. Manager (Legal) and the Govt. Advocate was purely advisory in nature and the appointing authority has got the administrative power to differ with the opinion of his officers. As the original test taken at the time of appointment of the concerned workmen itself was vitiated with fraud which came to light long after the appointment of the concerned workmen and as such there was need of retesting, the capability of the concerned workmen in terms of FCI Staff Regulations Appendix. There is a circular No. 38 of 1979 issued by the FCI headquarters but the same is not applicable to the present case in view of the fact that the appointments of the concerned workmen was vitiated with fraud from the very beginning.

The concerned workmen raised industrial dispute before the ALC(C) Patna regarding their discharge. When it was pending the concerned workmen filed Writ petition No. CWJC No. 2658 of 1986 before the Hon'ble High Court, Patna. It was dismissed by the order dated 17-6-1986 after hearing the counsel for the management and the workmen. Thereafter the workmen filed SLP No. 12761 of 1986 against the said order of Patna High Court which was heard by the Hon'ble Supreme Court and the said SLP was dismissed on 30-3-1987. The present case before the Industrial Tribunal is therefore barred by res-judicata. 4 of the concerned workmen had only submitted their leave application supported by Medical Certificate and on that account they did not appear in the re-test but their said applications for leave was not allowed and as such a composite order was passed against them also discharging them from their service. On the above facts it is prayed that it may be held that the re-test of the concerned workmen on 5-10-1985 was in order and that the concerned workmen are not entitled to any relief.

The concerned workmen were appointed by the Senior Regional Manager, Patna. The rank of Shri P. K. Thakur, Joint Manager was equal to the rank of Regional Manager and he was authorised by the Zonal Manager, Calcutta to exercise the powers of the Senior Regional Manager and as such it was

within his jurisdiction to pass the order of discharge of the concerned workmen. It was not necessary for the management to take any permission from the appropriate Govt. before passing the order of discharge against the concerned workmen. There was also no need to pay compensation as it is not a case of wrongful termination of service. The re-test was conducted under the administrative power and the Senior Regional Manager was within his jurisdiction. The re-test was conducted by competent authority and order of discharge was also issued by competent authority under the powers delegated to him and as such Industrial Tribunal has got no power to interfere in the matter.

The points for decision are as follows :—

1. Whether Shri P. K. Thakur had the authority to discharge the concerned workmen from service?
2. Whether the management was justified in holding re-test of the concerned workmen?
3. Whether the management was justified in discharging the concerned workmen from service on the basis of the result of re-test; and
4. Whether the termination of the services of the concerned workmen will amount to retrenchment under Section 25F of the ID Act and whether its provisions were complied with prior to the termination of the services of the concerned workmen.

The management examined five witnesses and the workmen examined two witnesses in support of their case. The documents of the management have been marked Ext. M-1 to M-40 and the documents of the workmen have been marked Ext. W-1 to W-20.

Point No. 1

The case of the workmen is that the concerned workmen were discharged from service by Shri P. K. Thakur, Senior Regional Manager, Incharge in the absence of the permanent Senior Regional Manager and that Shri P. K. Thakur had no authority to discharge the concerned workmen as he was lower in rank to Shri M. M. Kohli, Senior Regional Manager who had appointed them in service. Thus in nutshell their argument is that the order of discharge by an officer junior to the officer who had appointed concerned workmen could not have discharged the concerned workmen and as such the said order of discharge was illegal. It is admitted case of the parties that the concerned workmen were discharged from service on the order of Shri P. K. Thakur who was disputed on tour as Senior Regional Manager (Incharge) Regional Office Patna vide Ext. W-8 dated 5-5-1986. The said Shri P. K. Thakur has been examined by the management as MW-5 in this case. He has stated that in 1986 he was posted for about a month as Senior Regional Manager at Patna Regional Office and had joined in May, 1986 at Patna Regional Office. He has stated that the concerned workmen were discharged by him during the period of his stay at Patna as Senior Regional Manager, Incharge. He has further stated that he had delegated powers of Senior Regional Manager

at the time when he had discharged the concerned workmen. He further states that notification No. 35 dated 31-1-86 Appendix-II will show that Regional Manager/Joint Manager was the appointing authority in respect of Cat. III posts. Admittedly the concerned workmen belong to Cat. III posts. He has stated that a Dy. Manager cannot discharge or appoint any Cat. III staff. He has stated in his cross-examination that the concerned workmen were appointed by the Senior Regional Manager and that an Officer below the rank of the appointing authority cannot dismiss or discharge a workman. At page-III of his deposition MW-5 Shri Thakur has stated that the delegation of power is made by the Board and the Managing Director of FCI is the executive head. In the last para of his deposition MW-5 has stated that a Deputy/Zonal Manager is not competent to delegate the power and authorise a person to work as Senior Regional Manager. On perusal of Ext. W-8 it will appear that the office order dated 5-5-1985 was passed by the Dy. Zonal Manager for Zonal Manager. It is clear therefore that Shri P. K. Thakur as Joint Manager must have discharged the concerned workman but admittedly the concerned workmen were appointed by Senior Regional Manager. Shri Thakur had passed the order on the basis of the delegation of power of Senior Regional Manager Incharge and the said order was passed by the Zonal Manager who could not have delegated powers of Senior Regional Manager to Shri Thakur. It is clear from the evidence of MW-5 that the Managing Director of FCI is the executive head and the delegation of power which is to be made by the board has to be done through the Managing Director. The Managing Director cannot himself delegate the powers to any other authority as he himself exercises powers which is delegated by the Board of FCI. In the present case the board did not delegate powers of Senior Regional Manager to Shri P. K. Thakur, Joint Manager, FCI Zonal Office, Calcutta. Thus on the face of it Shri Thakur was not competent to issue the discharge order.

The case of the management is that the order Ext. W-8 dated 5-5-1986 was subsequently ratified by the Board vide Ext. M-37. Ext. M-37 is a Telex Message dated 17-6-1986 from the headquarters of FCI. It shows that the action of posting Shri P. K. Thakur, Joint Manager (Commercial) to look after the work of Senior Regional Manager, Bihar Patna and exercise all delegated powers of Senior Regional Manager in addition to his own duties at the Zonal Office is ratified with effect from the date Shri Thakur actually exercised powers of Senior Regional Manager, Patna. It is admitted that vide order dated 7-5-1986 a common order discharging the services of the concerned workmen with effect from 8-5-1986 as per provision of Rule 53(2) of FCI Staff Regulations, 1971 was issued to the workmen and they were discharged with effect from 8-5-1986. This ratified order Ext. M-37 from the Headquarters was sent on 17-6-1986 after the discharge of the concerned workmen. The question is whether Shri P. K. Thakur had authority to discharge the concerned workmen on the date he passed the order of discharge against the concerned workmen. From Ext. M-37 it is clear that Shri P. K. Thakur had not been authorised to work as fullfledged Senior Regional Manager by the competent authority and that on the day Shri P. K.

Thakur passed the order of discharge, he had no authority or power to discharge the concerned workmen. The power was vested to him subsequently by FCI Board and as the power which was not vested in Shri P. K. Thakur on the day he had passed the order of discharge, subsequent order ratifying the previous order cannot be held to be a good order. I hold therefore that Shri P. K. Thakur had no authority to discharge the concerned workman and that the order by Shri P. K. Thakur discharging the concerned workmen from service with effect from 6-5-1986 is without authority and as such the said order cannot be sustained.

Point No. 2 & 3

Ext. M-35 dated 7-5-1986 is an extract from the note sheet under the signature of Shri P. K. Thakur, Senior Regional Manager. It will appear that on receipt of some complaints the then Senior Regional Manager ordered for re-test of the Stenographers/Typists who were recruited/kept in panel during the year 1984-85 and it is found that only three typists passed amongst those who were appointed and three persons those who were kept in the panel also passed and all others failed. It is further stated that all the Stenographers who appeared in the test miserably failed. It was also found that two Stenographers and one typist did not appear on medical ground for the re-test and were on leave for some days. The note further adds that it seems that they were on leave deliberately to avoid the re-test. So there is sufficient reasons to believe that they were also below the standard in Typing/Stenography test. It further adds that in view of the above it is decided that the 28 employees named in the note be discharged from the service with effect from 8-5-1986 and one months pay in lieu of one months notice be paid to them. It was on this note of Shri P. K. Thakur, Senior Regional Manager of Patna Region that the concerned workmen were discharged from service. Thus this Ext. M-35 reveals the reason of the discharge of the concerned workman. The reason disclosed is that as the concerned workmen except 3 did not pass in the re-test they were thought to be low the standard and as such they were discharged from service. Regarding the three concerned workmen it is apparent that they did not appear in the re-test on the ground of their sickness but even then they have been discharged by the common order as they did not appear in the re-test and the S.R.M. was of the opinion that those three persons were deliberately avoiding to re-test and they were also treated in the same level as that of the concerned workman who had appeared in the re-test and failed. MW-1 who is working as Asstt. Manager (Personnel) at Regional Office, Patna has stated that the concerned workmen were discharged from service when they did not compete in the re-test. He has further stated that 4 of the concerned workmen had not appeared in the re-test and they were also discharged along with other concerned workmen by a common order. MW-2 Shri Prakash was working in the Regional Office Patna as Senior Regional Manager. He has stated that while he was working as Senior Regional Manager he got re-test conducted in respect of typists and Stenographers who were appointed in 1984 and 1985. He has further stated that the decision to take re-test was not taken by him but it was taken by Shri M. M.

Kohli who was Senior Regional Manager upto 30-9-85. The note sheet of M. M. Kohli is marked as Ext. M-22 and M-23 in this case. It shows that re-test of the typists and stenographers was ordered by Shri Kohli. Ext. M-27 is the minutes of the re-test of 29 concerned workmen. It includes the names of the candidates who appeared in the re-test. Ext. M-28 is also report of the committee which held the re-test of the Stenographers including the concerned Stenographers workmen. It also include the speed of typing of the 30 typists who appeared in the re-test. The other sheet of this exhibit shows the nil speed of the Stenographers in the re-test. It was on the basis of the result of the said re-test that the concerned workmen were discharged from service. It is admitted case of the parties that there is no provision of re-test or discharge of a workman on the basis of re-test in the FCI Staff Regulation. Thus MW-1, MW-2 and MW-5 have clearly stated that there is no provision for holding re-test and to discharge on the basis of the re-test. MW-1, however, had first tried to show by his evidence that re-test was a practice and that even in the past re-test was held on several complaints made by the union representative. He has stated that in the year 1969 and 1976 there was a re-test of typists. He has stated that the appointing authority has the power of holding re-test of the candidates for the appointment of Stenos and Typists. It is true that the management may have the power to hold re-test of candidates prior to their appointment. But question is whether the management can hold re-test of the concerned workmen who had already been appointed after holding a test by a committee set up by the management for the said purpose. MW-1 has stated that a test is held for the appointment of typists and stenographers and the persons who competed in the test are appointed in the service of the FCI. He has stated that the test was held before the appointment of the concerned workmen for which a committee was constituted to hold the test for the appointment. He has stated that the concerned workmen were appointed against regular vacancies in the time scale of FCI. According to him there is a FCI Staff Regulation to regularise the service conditions of the employees working in FCI which also guides the service conditions of the typists and stenographers. He has stated that there is no provision of holding re-test in the FCI Staff Regulation, 1971. He further adds that the re-test is done under the discretionary power of the appointing authority during the probationary period. He has stated that he does not know if there is any circular or letter of the management of FCI giving discretionary power to the appointing authority for holding the re-test. He has stated that a probationer employee is confirmed on the post after the expiry of the period of probation if the probation is not extended after the period of probation. He has stated that a probationary report is called for every 6 months period of the probationers and if the probationary report is satisfactory a workman is confirmed but if it is found to be unsatisfactory the period of probation may be further extended. He has also stated that the probationary period of the employees is extended only when his work has not been found to be satisfactory during the period of probation. He has stated that he is incharge of the confidential section where the probationary reports are submitted but no report or complaint was received against the concerned workmen during his period. It will also appear from his cross-examination that his

earlier statement in the cross-examination-in-chief in the year that in 1969 and 1976 there was a re-test of the typists but the said statement is clarified in the cross-examination when he stated that in 1969 and 1976 the re-test was held prior to the issuance of the appointment order. He also stated that he did not know, if any re-test was held by the FCI after the appointment of workmen except in the presence case. Thus it is clear from Ext. M-1 that the management of FCI had not held re-test of the employees who were already appointed after holding the necessary test for the appointment in FCI. It will also appear from the evidence of MW-1 discussed above that there was no provision of holding re-test in the FCI staff regulation or in any circular and that the said power was a discretionary power of the management. There is nothing on the record to show that the Senior Regional Manager had any discretionary power to hold re-test of the employees who had already been employed after holding a test for their appointment. It is clear therefore that the holding of the re-test of the concerned workman was not under the provision of the FCI Staff Regulation or under any circular of FCI. The stand of the management that the re-test was held under the discretionary power of the management also does not find support from any document produced before me.

As discussed above the concerned workmen were discharged from service on the basis of the result of the re-test in which they were held not to have qualified to be retained in service. The workmen have cited a decision reported in 1986 PLJR-P-723 (Arun Kumar Vrs Union of India). In the said case the petitioner, was appointed as a Clerk-cum-Godown Keeper under Punjab National Bank on a temporary basis of work from time to time which many breaks in service. He was in employment in the month of January, 1973 when his services were terminated with effect from 23-6-73 without payment of retrenchment compensation or wages in lieu of notice. The case of the management was that the petitioner was not discharged from service as having been rendered surplus but he was discharged on account of his failure at the written test which disqualified him from being absorbed in the service on substantive basis and therefore the petitioner cannot be treated to have been retrenched as to attract Section 25F of the I.D. Act. Their Lordships in para 6 of the judgement after discussing held relying on the Supreme Court judgement of Sundramoney's case that "discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was retrenchment within the meaning of Section 2(oo) of the I.D. Act and therefore the requirement of Section 25F had to be complied with." It will thus appear from the said decision of his Lordship that termination of service of a workman because of failure to pass the test which would have enabled him to be confirmed in service amounts to retrenchment. In the present case the services of the concerned workmen were discharged as they did not pass in the re-test and as such the discharge of the concerned workmen on the basis of the result of the re-test will amount to retrenchment and the discharge of the concerned workmen cannot be held to be justified unless the provision of Section 25F of the I.D. Act are complied with.

It is submitted on behalf of the workmen that 4 of the concerned workmen namely S/Shri Arun Kumar

Singh, Robin Kumar Sinha, Suhail Azam and Satish Pd. Singh did not appear in the re-test but even then they were discharged from service. In para 10 of the W. S. of the workmen, it is stated that 29 concerned workmen out of 33 appeared in the re-test under protest and 4 concerned workmen did not appear as they were on leave due to sickness on the date of re-test and accordingly applications were submitted on their behalf prior to the date fixed for re-test. The names of those 4 concerned workmen are stated in para-20 of the W. S. of the workmen which has not been denied by the management. In para-6 of the written statement of the management it is stated that the statement made in para-10 of the W. S. of the concerned workman is correct. Thus it is the admitted fact that 4 of the concerned workmen did not appear in the re-test held by the management on 5-10-83. Ext. M-27 and M-28 are minutes of the committee which held their re-test in respect of the typists and stenographers. It will show that 4 of the concerned workmen did not appear in the re-test. These concerned four workmen were also discharged from service along with the concerned workmen who had appeared in the re-test. Shri P. K. Thakur's noting Ext. M-35 states that two stenographers and one typist did not appear on the medical ground for the re-test and were on leave for some days. It further appears from the said noting that Shri Thakur thought that those persons were on leave deliberately to avoid the re-test and so there was sufficient reason to believe that they were also below the standard in typing stenography. The management's own noting in Ext. M-24 itself stated that "In case of Sl. No. 4 to 8 candidates be retested. Their probationary period be extended for another 6 months and again on others as proposed." Thus the management itself had doubt in their mind whether the Stenographers and the Typists who did not appear in the re-test could be discharged from service along with other concerned workmen who had appeared in the re-test on the ground that as they had not appeared there was sufficient reason to believe that they were also below the standard of typing and stenography. In my opinion it was a hasty action on the part of the management in discharging the concerned workmen who had not appeared in the re-test and the management ought to have held their re-test when they thought that their action of re-test of the concerned workmen during the period of probation was justified. The discharge of those 4 concerned workmen is therefore not at all justified under Regulation 15(3) of the FCI Staff Regulation, 1971.

In view of the discussions made above I hold that the management was not justified in holding the re-test of the concerned workmen and that the management was not justified in discharging the concerned workmen on the basis of the re-test.

Point No. 4

The case of the management is that since all the workmen were on probation and had not completed the period of 2 years probation they could be discharged from service without assigning any reason after giving a notice of 30 days or pay in lieu thereof as per provision of Regulation 15(3) of FCI Staff Regulations, 1971. Ext. M-18 is the series of office orders dated 7-5-86 by which the concerned workmen were discharged from service of the FCI with effect

from the afternoon of 8-5-86 as per provision of Regulation 15(3) of FCI Staff Regulation, 1971. It is further submitted on behalf of the management that there was a condition in the appointment order of the concerned workmen that their services were liable to be terminated without giving any notice and assigning any reason during the period of their probation and as such their discharge from service will not amount to retrenchment under the I. D. Act. The case of the workmen, on the other hand, is that the discharge of the concerned workmen on the basis of the result of the re-test is clear case of retrenchment and as the management has not complied with the mandatory provisions of the requirement of retrenchment, the discharge of the concerned workmen was not in accordance with the provision of Section 25F of the I. D. Act and their discharge was unjustified.

Section 25F of the I. D. Act provides the conditions precedent to retrenchment of workmen according to which no workmen employed in any industry who has been in continuous service for not less than one year under the employer shall be retrenched by that employer until the workman has been given one months notice in writing indicating the reasons of retrenchment or the workmen have been paid in lieu of such notice wages for the period of notice, he has been paid at the time of retrenchment compensation which shall be equivalent of 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months and notice in the prescribed manner is served on the appropriate government. Section 25F lays down the condition prerequisite to retrenchment of workman. The definition of continuous service is provided under Section 25B of the I. D. Act. It will appear from Section 25F that a workman shall be said to be in continuous service for a period if he is, in uninterrupted service. It further provides that where a workman is not in continuous service for a period of one year service he shall be deemed to be in continuous service for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. Admittedly the concerned workmen have worked continuously from the date of their appointment to the date of discharge which is about 2 years. WW-1 has stated that the concerned workmen worked for one to two years continuously and they were given their regular pay and allowances etc. WW-2 has stated that all the concerned workmen had worked continuously for more than one year. The said fact is not disputed and those two WWs have not been cross-examined on behalf of the management on the said point and as such it has to be held that the concerned workmen had completed more than 240 days of attendance in a year prior to their discharge from service. In view of the fact that the concerned workmen had completed more than 240 days of attendance in a year they were in continuous service of the management for more than a year.

Section 2(oo) of the I.D. Act defines retrenchment which means termination by the employer of the services of the workmen for any reason whatsoever otherwise than punishment inflicted by way of disciplinary action except in the case of voluntary retirement, retirement of the workman on reaching the age of superannuation, termination of the services of a

workman on the ground of ill health. It will thus appear that the discharge of the concerned workmen on the basis of re-test will also amount to retrenchment. I have already referred to the decision reported in 1986 PLJR, 723 in which it has been decided that the termination of service of workman because of his failure to pass a test which would have enabled him to be confirmed in service amounts to retrenchment.

It will appear from the deposition of MW-1, MW-5, WW-1 and WW-2 that no compensation was paid to the concerned workmen as is required under Section 25F(b) of the I. D. Act. It will also appear from the evidence that no notice in the prescribed manner was served on the appropriate government as is required under Section 25F(c) of the I. D. Act. It appears from the discharge order Ext. M-18 that a cheque of one month pay in lieu of 30 days notice was enclosed along with the order of discharge given to some of the concerned workmen. But the same exhibit will show that in case of some of the concerned workmen no notice pay was offered to the concerned workmen at the time of their discharge. So it appears that in case of some of the concerned workmen the provision of Section 25F(a) was complied with but so, far the requirements of Section 25F(b) and (c) are concerned there is absolutely no evidence to the effect that the concerned workmen were paid compensation equivalent of 15 days average pay or that the management had given notice in the prescribed manner on the appropriate government regarding retrenchment of the concerned workmen. It is clear therefore that the mandatory pre-requisite requirement of Section 25F were not complied with by the management and as such the order of discharge amounting to retrenchment is illegal.

I may refer to Section 25N of the I. D. Act in connection with the present case which deals with conditions precedent to retrenchment of workmen and it is almost alike the provisions in Section 25F of the I.D. Act except that under Section 25N 3 months notice is given in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. Section 25N is in Chapter VB which is the special provision relating to retrenchment. 25K deals with the application of Chapter VB and it shows that the provisions of this chapter shall apply to an industrial establishment in which not less than 300 workmen are employed on an average per working day for the preceding 12 months. Thus it will appear that Section 25F of the I. D. Act relates to an industrial establishment in which there are less than 300 workmen employed whereas 25N deals with industrial establishment in which there are not less than 300 workmen employed on an average per working day. According to the workmen there are 5000 persons working under the Regional Office of FCI Patna. WW-2 has stated in his examination-in-chief that about 5000 persons are working under the Regional Office of FCI, Patna. There is no cross-examination on the said point. I hold therefore that there are more than 300 workmen working in the said establishment of Regional Office, FCI, Patna and such the specific provision of Section 25N is applicable to the establishment of Regional Office, FCI Patna. Accordingly the management was required to give either 3 months notice in writing indicating the reasons for retrenchment or 3

months wages for the period of notice, retrenchment compensation equivalent to 15 days average pay for every completed years of continuous service or any part thereof in excess of 6 months and notice in the prescribed manner is served on the appropriate government and the permission of such Govt. or authorities obtained under sub-section 2 of Section 25N of the I.D. Act. Sub-section (2) of 25N provides that on receipt of notice under clause (c) of sub-section (1) of the appropriate Govt. or authority may after making enquiry grant or refuse the permission for retrenchment to which the notice relates with reasons in writing. Clause (6) of Section 25N provides that where no application for permission under clause (C) of Sub-section (1) is made within the period specified or where the permission for retrenchment is refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment is given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being enforced as if no notice had been given to him. The conditions precedent to retrenchment of workmen under Section 25N of the I. D. Act is more stringent than the provision under Section 25F of the I. D. Act because of the fact of the large number of workmen involved in an establishment. Admittedly, none of the provisions of Section 25N of the I. D. Act have been complied with by the management before the concerned workmen were discharged from service and as such it will be deemed that the concerned workmen continued in the job. Thus the retrenchment of the concerned workmen is illegal under Section 25N of the I.D. Act.

The workmen have referred to the decision reported in 1980 Lab IC 687 (Santosh Gupta Vrs State Bank of Patiala) and 1986 PLJR 723 (Arun Kumar Vrs Union of India). In 1980 Lab IC equivalent to AIR 1980 SC 1219. It was held by their Lordship in Supreme Court that the expression termination of service for any reason whatsoever in Section 2(oo) covers every kind of termination of service except those not expressly included in Section 25F or not expressly provided by other provision of the Act. Their Lordships further hold that the discharge of the workmen on the ground that she did not pass the test which would have enabled her to be confirmed was retrenchment within the meaning of Section 2(oo) and therefore the requirement of Section 25F had to be complied with. In the said case Santosh Gupta was employed in the State Bank of Patiala. Despite breaks she admittedly worked for 240 days in the year preceding 21-8-1974. According to her the termination of her services was retrenchment within Section 2(oo) of the I.D. Act and since there was retrenchment the termination was bad for non-compliance with the provision of Section 25F of the I.D. Act. On the other hand the contention of the management was that the termination of service was not due to discharge or surplus labour. It was due to the failure of the workman to pass the test which would have enabled her to be confirmed in the service. Therefore it was not retrenchment within the meaning of Section 2(oo) of the I.D. Act. On the said facts their Lordship decided as stated above by me.

In 1986 PLJR it was held that the termination of service of a workman because of failure to pass test which would have enabled him to be confirmed in

service amounts to retrenchment and that the provision of Section 25F have to be complied with. The above two rulings have been submitted in order to establish that the termination of the services of the concerned workmen amount to retrenchment and that the provision of retrenchment have to be complied with.

The case of the management is that the concerned workmen were on probation and their services were terminated according to regulation 15(3) framed by the FCI and as there is a specific regulation framed by the FCI, Section 25F or Section 25N of the I.D. Act will not be applicable in case of the concerned workmen. The provision of the Staff Regulation of the FCI cannot override the provision of the Industrial Disputes Act. Ext. W-3 and W-4 are the appointment letters in respect of Stenographers and Typists. Clause 2 of the said Exhibits provide that the workmen so employed will be on probation for a period of one year from the date of his appointment which may be extended by a further period not exceeding one year. It further provides that on completion of the period of probation he will be considered for confirmation in the post. During the period of probation he shall be liable to be discharged from service without any notice or without assigning any reason. On those terms of appointment the management has laid stress and it has been submitted on their behalf that during probation the management could discharge them from service without any notice. It will appear from Ext. W-3 and W-4 that the concerned workmen were put on probation for a period of one year from the date of their appointment, which could be extended by a further period not exceeding one year. Ext. M-10 series are the probationary reports in respect of some of the concerned workmen. These reports do not show that the work of the concerned workmen were unsatisfactory. MW-1 has stated that he is incharge of Confidential section where the probationary reports are submitted. He has stated that no report or complaint was received against the concerned workmen during his period. There is absolutely no evidence on the record to show that the reports of the concerned workmen during the period of one year of their probation was unsatisfactory. If their work had been unsatisfactory the management must have produced documents to that effect. The period of their probation was not extended soon after the completion of one year of the probationary period of the concerned workmen. Exts. M-8 and M-9 are office orders under the signature of the Senior Regional Manager by which the probationary period in respect of some of the concerned workmen was extended for a period of 6 months with effect from the date shown against each in terms of regulation 15(2) of FCI Staff Regulation 1971. Admittedly the period of probation of other concerned workmen were also extended in the similar way. It will appear that the period of probation of the concerned workmen were extended on 19th September, 1985 and on 7-11-1985 much after the completion of one year of service of the concerned workmen. There is no case of the management that the extension of the probationary period was made as the performance of the concerned workmen were not satisfactory. In fact, no evidence

has been led by the management to show that the performance of the concerned workmen were unsatisfactory. As the management had not received any report from the authorities concerned regarding the unsatisfactory work of the concerned workmen it will be deemed that they were confirmed automatically after completion of one year. The extension of the period of probation made by the management had no basis and it appears that the said act of the management was arbitrary. I hold therefore that the concerned workmen will be deemed to have been confirmed on completion of one year of their probation in accordance with the terms and condition of their service and the management had no material before it to subsequently extend the period of their probation and thus keep the fate of the concerned workmen hanging. As the concerned workmen will be deemed to be confirmed after one year of the completion of probation, they cannot be discharged from service without framing any charge against them. The discharge of the concerned workmen without holding any enquiry into any allegation against them was uncalled for and was not justified.

It has been submitted on behalf of the management that retrenchment does not include termination of service of the workmen as a result of contract being terminated under stipulation in their behalf contained therein. The workmen have further expanded their argument by stating that in the present case in the appointment letters of the concerned workmen it was clearly stated that they were appointed on probation for a period of one year which could be extended by another year and that during the said period of probation they could be discharged without assigning any reason. According to the management in the appointment letters itself the conditions are incorporated under Regulation 15(3) of the FCI Staff Regulation. The management has referred to the amending act No. 49 of 1984 which amended Section 2(oo) of the I.D. Act by adding a sub-section (bb) which came into effect from 18-8-84. It is a fact that sub-clause (bb) has been added to Section 2(oo) of the I.D. Act in August, 1984. It provides as follows :—

“(bb)—termination of service of the workman as a result of non-renewal of the contract of employment between the employer and the workmen concerned on expiry of such contract being terminated under a stipulation in that behalf contained therein.”

It has been submitted on behalf of the management that the judgement reported in 1980 Supreme Court Page 1219 was delivered on 29-4-1980 and the case reported in 1983 Supreme Court P-1320 the judgement was delivered on 1-11-1983 relying on the definition of retrenchment given in Section 2(oo) of the I.D. Act and as the definition of retrenchment has been amended by Act No. 49 of 1980 with effect from 18-8-1984 and a sub-clause (bb) has been added to it, the Supreme Court decisions referred to above have been rendered inapplicable. Without going much into discussion of the matter I would just refer to the decision reported in 1986 PLJR P-723. The same argument which has been raised on behalf of the management before me was raised before his Lordship in the said decision by

the Learned Counsel representing the management and his Lordship have come to a definite opinion regarding the same. His Lordship rejected the management's submission on two grounds out of which we are not concerned with the first ground as the same is not applicable in the present case. His Lordship said that "the second answer is that there is nothing to show that the appointment of the petitioner was for a fixed period expiring on his failure to pass the examination. The test was held for the purpose of confirming the employees in service and therefore on the petitioner's failure at the examination, his services did not automatically come to an end." On reference to the terms of appointment of the Stenographers and Typists in Ext. W-3 and W-4 it will appear that there was no stipulation in the terms of appointment that the appointments of the concerned workmen was for a fixed period expiring on his failure to pass the examination. On the contrary it is admitted case of the parties that the concerned workmen were appointed against permanent vacancy and were put on probation and there was no time limit in terms of appointment or a stipulation that the concerned workmen will be discharged from service on their failure to pass the re-test. Admittedly the re-test was held by the management in order to see whether the concerned workmen could be confirmed or not and therefore the services of the concerned workmen did not automatically come to an end on their having failed in the re-test examination. It is clear that the provision of Section 2(oo)(bb) is not applicable and the management cannot get its advantage.

It was held in 1981 LIC page 1229 that termination of service without payment of retrenchment compensation is invalid and that stipulation in terms of appointment that service was terminable any time without notice—the termination was still by way of retrenchment and compliance with Section 25F (in the present case Section 25N) cannot be dispensed with. The submission of the management therefore that Section 25F is not applicable as there was a specific condition in their appointment letter cannot be accepted.

It was held in the case reported in AIR 1983 Supreme Court page 1320 that termination of employees while on probation on the ground of unsuitability amounts to retrenchment and for non-compliance with the provision of retrenchment the termination is invalid. The management has discharged the concerned workmen on the ground of unsuitability holding that they did not qualify in the re-test and as such the said discharge amounted to retrenchment as held by their Lordship in 1983 Supreme Court. Admittedly FCI is an industry under the definition of the I.D. Act and the Typists and Stenographers working in FCI are workmen under the I.D. Act. I have discussed the relevant decisions of the Hon'ble Court and the submission of the management that as the service of the concerned workmen were terminated under FCI Staff Regulations the provision of the I.D. Act will not be applicable in the case of the concerned workmen has no good reasons for sustaining it. I hold therefore that the termination of the services of the concerned workmen amount to retrenchment under Section 25F/25N of

the I.D. Act and its provisions were not complied with by the management before terminating the services of the concerned workmen.

It has been submitted on behalf of the management that the workmen had submitted several Writ petitions before Hon'ble Patna High Court against the re-test and subsequent discharge and they had also filed Special Leave Petition before the Hon'ble Supreme Court which were all dismissed and as such the principles of res-judicata will be applicable in this case as their submissions made before the Hon'ble Court was not accepted. The orders and the petitions filed before the Hon'ble Court have been filed before this Court and are exhibited. But I do not feel the necessity of examining them in details as the point involved is the point of law. I would refer to the decision reported in AIR 1986 Supreme Court page 1780 wherein it was held by their Lordships that dismissal of special leave petition by Supreme Court by non-speaking order is no bar to trial of the same issue in the High Court. The petitions filed by the concerned workmen were dismissed in limine and their Lordships in dismissing those petitions of the workmen did not discuss and give detailed reasons and as such, in my opinion, the principles of res-judicata is not at all applicable to the facts of this case.

In the result, I hold that the action of the Senior Regional Manager, FCI, Patna in holding re-test of the concerned 33 workmen on 5-10-1985 is not in order and justified. As the concerned workmen were discharged from service on the basis of their failure in the said re-test, the said order of discharge cannot be sustained and accordingly the concerned workmen are reinstated in their job with effect from the date of their discharge and they will be deemed to continue in the service. The management is directed to reinstate them from their date of discharge and should also pay them all back wages and consequential benefits available to them within one month from the date of publication of the Award in the *Gazette*.

This is my Award.

I. N. SINGH, Presiding Officer.

The names of the Typists and Stenographers are given in Annexure-I and II.

ANNEXURE-1

TYPIST

| Sl. No. | Name |
|---------|-------------------------|
| 1. | S/Shri P. C. Tiwari. |
| 2. | " Akhilesh Kumar Singh. |
| 3. | " Ram Dutta. |
| 4. | " Manoj Kumar. |
| 5. | " Kapildeo Prasad. |
| 6. | " S. R. Chakraborty. |
| 7. | " Ashok Kumar. |
| 8. | " Onkar Nath. |
| 9. | " Ramashray Yadav. |
| 10. | " Rabindra Kumar. |
| 11. | " Satish Kumar Singh. |

12. S|Shri Rabindra Kumar Singh.
 13. " Birendra Choudhary, S|C.
 14. " Prem Sagar Pd. Singh.
 15. " Kishori Prasad.
 16. Smt. Sushila Hansdak.
 17. S|Shri Suhail Azam.
 18. " Nitendra Kumar Singh.
 19. " Munna Prasad Gupta.
 20. " Brahma Nand Singh.
 21. " Ratan Lal.
 22. " Tapan Kumar Das.
 23. " Bhanu Prasad Singh.
 24. " F. X. Lobo.
 25. " Manoj Kumar.

I. N. SINHA, Presiding Officer.

ANNEXURE-II STENOGRAPHERS

| Sl. No. | Name |
|---------|---------------------------|
| 1. | S Shri Arun Kumar Singh. |
| 2. | Miss Anama T. D. S C. |
| 3. | S Shri Robin Kumar Sinha. |
| 4. | " Ravindra Kumar. |
| 5. | " Kaushlendra Kumar. |
| 6. | " Srikant Mondal. |
| 7. | " Satish Pd. Singh. |
| 8. | " Arbind Prasad. |

I. N. SINHA, Presiding Officer.

का.आ. 3140 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक, आगरा के प्रबंधन के संबंध में निर्यातकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करता है, जो केन्द्रीय सरकार को 28 मिनम्बर, 1988 को प्राप्त हुआ था।

S.O. 3140.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India, Agra and their workmen, which was received by the Central Government on the 28th September, 1988.

ANNEXURE

BEFORE SHRI G.S. KALRA, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 19/85

In the matter of dispute between :

Shri Ram Bharose s/o Shri Kanhiya Lal,
resident of 424, Mohalla Khera, Kosi
Kalan, Distt. Mathura.

Versus

Regional Manager, State Bank of India, Mahatma Gandhi Road, Agra.

APPEARANCES :

Shri P. K. Gupta for the Management.
Shri V. K. Gupta for the workman.

AWARD

The Central Government in the Ministry of Labour vide its Order No L-12012/203.84-D.III, A dated 2th April, 1985 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the State Bank of India management in terminating the services of Shri Ram Bharose Cashier, Kosi Kalan Branch with effect from 1-8-1973 while retaining his juniors in the services and not considering him for further employment when appointing fresh hands is legal and justified? If not, to what relief is the workman concerned entitled?"

2. Some of the undisputed facts are that the claimant workman worked with the State Bank of India in its branch at Kosi Kalan as a Cashier in temporary basis for broken spells during the period between 9-7-71 to 30-7-73. The number of working days put in by him during this period are as under :

| Particulars | Days |
|--|------------|
| 1. 9-7-71 to 31-7-71 | 23 |
| 2. August, 1971 | 31 |
| 3. Sept. 1, 1971 to 6-9-9-71 | 6 |
| 4. 15-11-72 to 30-11-72 | 16 |
| 5. 1-12-72 to 31-12-72 | 31 |
| 6. 1, 2, 22-1-73 to 31-1-73 | 12 |
| 7. 1-2-73 to 28-2-73 | 28 |
| 8. 1-3-73 to 31-3-73 | 31 |
| 9. 1-4-73 to 30-4-73 | 30 |
| 10. 1-5-73 to 24 & 26 to 31-5-73 | 30 |
| 11. 1-6-73 to 30-6-73 | 30 |
| 12. 1-7-73 to 23-7-73 & 25-7-73 to 30-7-73 | 29 |
| Total | 297 |

3. The case of the workman is that he was appointed against regular and permanent vacancy after completing the requisite formalities of interview etc. and he was given artificial breaks and hence had completed 240 days of service. His services were terminated without any notice or wages in lieu of notice or payment of any retrenchment compensation. The bank retained junior persons to him in service and also appointed a number of new hands after his termination. Hence there was violation of the provisions of section 25-F, 25-G and 25-H of the I.D. Act. It was also alleged that the Management did not follow the provisions of the Sastry Award and Desai Award as well as Bipartite agreements while terminating his services. Hence the workman prayed that he may be reinstated with continuity of service and with full back wages.

4. The Management has contended that the claim of the workman suffers from latches as admittedly his services were terminated in the year 1973 but he raised the dispute only in 1984 after lapse of 11 years. Even considering the belated stage, the workman was given a chance for permanent absorption in the bank by calling to appear in the written test held on 23-6-85 but the workman failed to avail of the opportunity. It was further stated that the workman was engaged on various occasions purely against temporary/cave vacancies and his services were discontinued after the requirement was over. If the claim of the workman was to be accepted, the bank would not be able to employ any person on temporary basis even for a day and it would put to an end to the scheme of recruitment of permanent employees by the process of recruitment by the well established selection process, and would virtually put an end to the merit based selection which would be violative of Articles 14 and 16 of the constitution. It was denied that the workman had put in 240 days of service in one calendar year.

5. There appears to be considerable merit in the objection of the Management that this case suffers from latches. As per his own case, the service of the workman were terminated w.e.f. 30th July, 1973. However, the workman raised the dispute with the ALC only in 1984 and the reference order was made by the Government only on 27-4-1985. No cogent explanation has been given by the workman for this inordinate delay in raising the industrial dispute. In order to cover up his delay the workman has placed on record photo copies of certain postal receipts collectively marked on Ex. W-2. However, he has not furnished any evidence as to what were the representation or letters sent by him vide these postal receipts. Moreover, the photo copies Ex. W-2 are quite illegible and do not show the particulars of the addressee. The particulars of the addressee in some of the receipts have been subsequently filled in ink which appears to be an interpolation. All these receipts appear to be suspicious in nature and no reliance can be placed on them. Again, all these receipts pertain to the years 1973 and 1974. Thereafter the workman wrote one letter dated 4-6-1982 to the Management demanding for permanent absorption failing which he would be compelled to take recourse to law. Even if it was accepted that he had made certain representation vide postal receipts Ex. W-2, there is no explanation available as to why the workman remained silent till 4-6-82 when he wrote the letter Annexure 2 'C' to the Management. There is a well known maxim that delay defeats equity and equity aids the vigilant. In this case the workman was not at all diligent and it appears that he was not seriously interested in continuing to serve the bank and has raised the dispute for some extraneous consideration. The claim of the workman is liable to be rejected for the short ground of latches.

6. Although the workman is shown to have put in a total of 297 days of service with the respondent bank, from 9-7-71 to 30-7-73, for the purpose of finding out whether he had put in one year's continuous service as defined in section 25-B of the I.D. Act, we have to see the number of working days during the 12 calendar months preceding the date of his alleged termination i.e. 30-7-73. From the figures given in para 2 above, it will be seen that

the workman had put in a total of only 237 days during the 12 calendar months preceding the date of his termination i.e. 30-7-73. He is, therefore, not proved to have put in the minimum of 240 days during the said 12 calendar months. Hence the workman has not completed one year's continuous service as required under the provisions of section 25-B. The pattern of working days does not show that any artificial breaks were given in his service or that the services of the workman were terminated when he was about to complete 240 days of service. Hence there was no unfair labour practice as alleged. The facts of the case cited at Kapurthala Co-operative Bank Limited, Kapurthala Vs. Presiding Officer, Labour Court Jalandhar and others 1984 Lab. LC 974 Punjab and Haryana High Court, are therefore, distinguishable and the ratio of the said authority is not applicable to the present case. As the workman had not completed one year's continuous service, there was no violation of the provisions of section 25-F of the I.D. Act.

7. The workman has made a vague allegation that persons junior to him were retained in service when his services were terminated. However, he has not furnished the names of any junior person who is alleged to have been retained in service. The bank has denied that any person junior to him was retained in service. Hence no violation of section 25-G of the I.D. Act is proved.

8. Regular recruitment in the State Bank of India is public employment because the bank is a "State" under Article 12 of the Constitution of India and all Indian Citizens have a right to equal chance of employment under Article 16 of the Constitution of India. The bank has stated that there are set procedures for recruitment to services according to which vacancies are suitably advertised; written test for all the applicants is held and candidates who qualify in the written test are interviewed and those who qualify are absorbed permanently in the Bank. Admittedly the applicant was never recruited through this process. At best the bank was required to give the workman an opportunity for re-employment according to the said procedures. The bank has made substantial compliance with this requirement by giving the workman an opportunity to sit in the test held on 23-6-85. It is the workman who failed to avail of the said opportunity. The workman has tried to prove that he was not duly informed about the holding of the said test but he has failed to convince this Tribunal that he did not have prior information regarding the holding of the said test. Rather, the evidence placed on record proves it otherwise. Ex. M-1 is a letter dated 22-6-85 addressed by the Branch Manager to the workman at his admitted address informing him about the holding of the test on 23-5-86. Ex. M2 is an extract from the Dak Book which shows that the communication was received by the father of the workman on 22-6-85. The workman has produced a photo copy Ex. W-3A and W-3B of the envelop containing the said letter in which the postal stamp is shown to bear the date 24-6-85. However, it appears that the date has been tampered with by hand and in the absence of the original no reliance can be placed on this document. However, the front of the envelop (copy of W-3A) shows that it was only confirmation copy which

supports the plea of the Management that the workman had been informed telegraphically and what was sent in the envelop was only a confirmation copy. In fact the workman himself in his cross-examination as WW1 admitted that he was called to appear in the test held on 23-6-85 but his grievance is that he was not called for the tests held in 1982 and 1978. However, this grievance of the workman is meaningless because he made a representation for absorption in the bank service only in the year 1982 and thereafter the Management has given him the offer. Hence there has been no violation of section 25-H of the I.D. Act also.

9. As has been shown the workman was employed on a temporary basis. There is a specific provision in the Bipartite Settlement and Bank Awards for employment in the bank of temporary employees but the period of such temporary employment has been restricted so as not to exceed 90 days. Therefore, the employment of the workman on temporary basis even against a permanent vacancy is permissible under the Bipartite Settlement/Bank Awards and the same cannot be said to be illegal. However, the bank clearly committed an irregularity by exceeding the limit of 90 days in the case of the present workman and also for not giving him the requisite notice of one month and also for not issuing him letters of appointment and termination. However, these are only irregularities for which compensation can be awarded but there is no case for reinstatement.

10. In view of the discussion made above, the action of the Management is held to be legal and justified and the workman is not entitled to reinstatement. However, the Management is directed to pay a sum of Rs. 2000 as compensation to the workman for the irregularities committed by it. This reference stands disposed of accordingly.

Further, it is ordered that the requisite number of copies of this award may be forwarded to the Central Govt. for necessary action at their end.

G. S. KALRA, Presiding Officer
6th September, 1988.

[No. L-12012/208/84-D.II(A)|D.III(A)]

R. K. GUPTA, Desk Officer

नई दिल्ली, 4 अक्टूबर, 1988

का.आ. 3141.—केन्द्रीय सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 8 के खण्ड (ख) के अनुसरण में श्रीमती जानकी कठपालिया के स्थान पर श्री डी.के. सिंह, वित्तीय सलाहकार, श्रम मंत्रालय की कर्मचारी राज्य बीमा निगम की स्थायी समिति के सदस्य के रूप में नामनिर्दिष्ट किया है।

अतः अब केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 8 के अनुसरण में, भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 293 दिनांक 8 जनवरी, 1988 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, "[केन्द्रीय सरकार द्वारा धारा 8 के खण्ड (ख) के अधीन नामनिर्दिष्ट]" शीर्षक के नीचे मध्य 2 के सामने की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात् :—

"श्री डी.के. सिंह,
वित्तीय सलाहकार,
श्रम मंत्रालय,
भारत सरकार,
नई दिल्ली।"

[मं. यू-16012/13/88-एस.एस.-1]

ए.के. भट्टाराई, अवर सचिव

New Delhi, the 4th October, 1988

S.O. 3141.—Whereas the Central Government has, in pursuance of clause (b) of section 8 of the Employee's State Insurance Act, 1948 (34 of 1948) nominated Shri D.K. Singh, Financial Adviser, Ministry of Labour as member of the Standing Committee of the Employee's State Insurance Corporation, in place of Shrimati Janaki Kathpalia;

Now, therefore, in pursuance of section 8 of the Employee's State Insurance Act, 1948 (34 of 1948), the Central Government, hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour S.O. No. 293, dated the 8th January, 1988, namely:—

In the said notification under the heading "[Nominated by the Central Government under clause (b) of section 8]", for the entry against Serial Number 2, the following entry shall be substituted, namely :—

Shri D. K. Singh, Financial Adviser, Ministry of Labour, Government of India, New Delhi.

[No. U-16012/13/88-SS.1]

A. K. BHATTARAI, Under Secy.

नई दिल्ली, 5 अक्टूबर, 1988

का.आ. 3142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 5th October, 1988

S.O. 3142.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
KANPUR

Industrial Dispute No. 33 of 1988

In the matter of dispute between :

Dr. P.C. Bajpai, 990 Block 'Y' Kidwai Nagar,
Kanpur.

AND

The Assistant General Manager, Allahabad
Bank, Zonal Office, 113/58 Swaroop Nagar,
Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/259/II/87-D-II(A) dt. 21-3-88, has referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Allahabad Bank in terminating the services of Shri Raj Narain Singh, Peon cum Chowkidar from the service of the Bank is justified ? If not, to what relief the concerned workman is entitled ?"

2. The present case was fixed on 19-4-1988 for filing the statement of claim on behalf of the workman intimation of which had been sent to the workman's representative by registered post. On 19-4-88, Shri P. C. Bajpai appeared on behalf of the workman, but requested for a date for filing the statement of claim which was allowed and 23-5-88 was fixed.

3. On 23-5-88 Shri G. V. Dwivedi appeared for the management but none appeared for the workman nor claim statement was filed. Issue of fresh notice fixing 27-6-88 was ordered for filing statement of claim on behalf of the workman. On 27-6-1988 none appeared from either side as such time till 18-7-1988 was allowed. On 18-7-1988 the Hon'ble Presiding Officer, was on leave as such 9-8-1988 was fixed in the case.

4. On 9-8-1988 Sri R. K. Srivastava appeared for the management. None appeared for the workman nor the claim statement was filed.

5. Thus in view of the above, it appears that neither the workman nor has authorised representative is interested in prosecuting the case. As such a no claim award is given in the instant case.

6. Reference is answered accordingly.

Let six copies of this award be sent to the Govt. for its publication.

ARJAN DEV, Presiding Officer
[No. L-12012/259/II/87-D-II(A)]
N. K. VERMA, Desk Officer

नई दिल्ली, 5 अक्टूबर, 1988

का.आ. 3143 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्डिया गवर्नमेंट मिनट, बम्बई के प्रबन्धतंत्र से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1, बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-88 को प्राप्त हुआ था।

New Delhi, the 5th October, 1988

S.O. 3143.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1 Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of India Government Mint, Bombay and their workmen, which was received by the Central Government on the 22nd September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1 AT BOMBAY

Reference No. CGIT-19 of 1987

PARTIES :

Employers in relation to the management of India
Government Mint, Bombay.

AND

Their workman.

APPEARANCES :

For the Management : Mr. M. B. Palshikar, Advocate.

For the Workman : Mr. R. V. Gangal, Advocate.

INDUSTRY : Mining

STATE : Maharashtra

Bombay, dated the 28th day of June, 1988

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, has referred the following dispute to this Tribunal for adjudication.

"Whether the action of the management of India Government Mint, Bombay in compulsorily retiring Shri B. G. Thakoor, an Assistant Bullion Keeper, working in Govt. Mint Bombay w.e.f. 9th November 1981 vide order No. 163 dated 9th November, 1981 is justified ? If not, to what relief is the workman concerned entitled to ?"

2. The workman, who was working as Assistant Bullion Keeper in Govt. Mint at Bombay, was served with a charge-sheet, by the General Manager of the Mint, vide memo dated 29th April, 1980. The charges levelled against the workman were—

"(1) That the said Shri B. G. Thakoor while functioning as U.D. Asst. Bullion Keeper in the West Coining Department of the India Government Mint, Bombay has stopped submitting Daily Production Report of the coins manufactured in his Department to the Superintendent, West Coining Department with effect from 15-3-1980.

(2) That the said Shri B. G. Thakoor, while functioning as U.D. Asst. Bullion Keeper, in the India Government Mint, Bombay refused to sign the duty chart dated 29-2-1980 circulated for information and guidance. Shri Thakoor, U.D.A.B.K. by this act committed gross misconduct and contravened the Rule 3(i) (ii) (iii) of the C.C.S. Rules 1964.

- (3) That Shri B. G. Thakoor, while functioning as U.D. A.B.K. in the India Government Mint, Bombay disobeyed the order of the Bullion Keeper dated 18-3-1980, circulated through Deputy Bullion Keeper, to submit the production reports to the Superintendent of his Department. Shri Thakoor by this act committed gross misconduct and contravened the Rule 3(i)(ii)(iii) of the C.C.S. (Conduct) Rules 1964.
- (4) That the said Shri B. G. Thakoor had refused to sign, in token of having seen the Memo No. II-3/233/II/80 dated 23-2-1980 circulated for information of all concerned Asstt. Bullion Keepers. Shri B. G. Thakoor by this act committed gross misconduct and contravened the Rule 3(i) (ii) (iii) of the C.C.S. (Conduct) Rules 1964.
- (5) That Shri B. G. Thakoor, while functioning as U.D. A.B.K. in the India Government Mint, Bombay during the period from 1-2-79 onwards instigated his fellow Asst. Bullion Keepers on a number of occasions, a few instances are (i) in February, 1979, he instigated Shri P. T. Sakhalakar, Temp. I.D.A.B.K., to refuse to prepare a typed letter to currency officer, Reserve Bank of India (ii) in February, 1979 he has instigated other Asst. Bullion Keepers not to take important visitors round the Mint, (iii) on 9th June 1979, he has instigated the Deputy Bullion Keepers and Asst. Bullion Keepers not to work in shifts including overlapping shifts as per D.O. No. 28D/8-6-1979 (iv) he instigated other Asst. Bullion Keepers not to copy weightment sheets of various silver balances in the strongholds as required for the verification squad (v) he instigated other Asst. Bullion Keepers not to copy silver fitness in the weightment sheets."
3. On the basis of the evidence led by the management in the enquiry, legality and validity of which was not challenged at the hearing of this reference, the enquiry officer held that charges Nos. 1, 3 and 4 were proved and charges Nos. 2 and 5 not proved. The enquiry officer submitted his report on 14-10-1981.
4. After the enquiry was completed and before the enquiry officer submitted his report the workman addressed a letter dated September, 1981 to the General Manager of the Mint, admitting all the charges levelled against him. This is what the workman stated in his letter :—
- "With reference to the Memorandum bearing No. I-24/529/II/1980 dated 29th April, 1980 I hereby accept all the charges unconditionally. Although I have accepted the charges rather delayed, yet request you to kindly forgive me. I assure you that the same will not be repeated in future. I request you to kindly take a lenient view.
- During the period from the date of my suspension to date I have suffered untold of miseries and financially too I have suffered a lot. I have lost my peace of mind. As I have been getting only 25% of my normal pay during the said period, life has become unbearable to my family and to me. I, therefore, crave your indulgence to take a sympathetic view in my case and oblige.
- Thanking you."
5. The management however, chose to compulsorily retire the workman. The workman challenged this order by a writ petition in the Bombay High Court. The writ was summarily rejected, and the appeal to the Division Bench, also met the same fate. The workman therefore moved the Supreme Court. The Supreme Court issued a notice to the management with a view to ascertain whether it was willing to impose any other minor punishment on condition that the workman would not press for the salary for the period during which he had not worked. The management however did not accept the implied suggestion and the special leave petition was dismissed.
6. Only question that survives for consideration in this reference is about the severity or otherwise of the punish-

ment inflicted on the workman. According to the workman the punishment of compulsory retirement is unduly harsh and unjustified while according to the management, looking to the gravity of the misconduct, the workman has already been dealt with leniently and no further leniency is called for.

7. No doubt the workman flouted the rules laid down by the management for regulating the working of the Mechanical Department. But it is a matter of record that other Asst. Bullion Keepers except Shri J. Y. Rao who also were charged for flouting the rules, by refusing to submit the daily production reports, were dealt with leniently and were let off with a warning. True it is that these workmen were not charged with instigating others to refuse to submit the reports, while Shri Thakoor and J. Y. Rao were charged for that misconduct also. Shri J. Y. Rao was given the same punishment as that given to Shri Thakoor. But ultimately the management accepted the apology of Shri J. Y. Rao and reinstated him in service. The management has however consistently refused to show similar mercy to Shri Thakoor, who had tendered his apology, even before the enquiry officer submitted his report.

8. The only rationale there can be behind this stiff attitude of the management is that the workman, as a part of his union activity, instigated his colleagues to flout the rules. But apart from the fact that Shri J. Y. Rao also was charged with that misconduct, the enquiry officer has held that the said charge was not proved. True it is that in his above-quoted letter the workman admitted all the charges levelled against him. But it is clear from the letter itself that starvation forced him to fall prostrate before the management and accept whatever he was charged with. Under the circumstances there is substance in the contention of the workman, who claims to be an active worker of the Bharatiya Mazdoor Sangh—a claim which is not disputed—that he is victimised for his union activities.

9. The contention that the rule which enjoins a duty on the Asst. Bullion Keepers to submit daily production reports, causes hardship to them is also not without foundation. It is this rule against which the workman, and the union which he represented, were agitating. It is not disputed that the bullion keepers are not concerned with production, that the production department is under the Engineers and the Works Manager and the bullion keepers have no control over the production section. Ordinarily therefore the persons in charge of production should be directed to submit the production reports. The apprehension of the bullion keepers that on the basis of their reports they will be held responsible for the discrepancy between issue of stock and production of coins cannot be said to be imaginary and unfounded. It is clear that in refusing to submit the production reports, the Assistant Bullion Keepers were promoted mainly by the instinct of self-protection and not by indiscipline or disobedience. In my view therefore, the compulsory retirement of the workman was thoroughly unjustified and in view of the fact that the workman and other Assistant Bullion Keepers have undertaken to submit the reports as before, nominal punishment of stoppage of one increment for a period of three years would meet the ends of justice.

10. In the result, the order of compulsory retirement of the workman, Shri B. G. Thakoor is set aside and he is directed to be reinstated in service with full back wages. The punishment of compulsory retirement is reduced to stoppage of one increment for a period of three years. Award accordingly.

M. S. JAMDAR, Presiding Officer
[No. I-16012/4/85-D II (B)]

का.अ. 3144 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम रेलवे एजेंसी के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट की प्रकाशित करती है, जो केन्द्रीय सरकार को 26-9-88 को प्राप्त हुआ था।

6. Only question that survives for consideration in this reference is about the severity or otherwise of the punish-

S.O. 3144.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railway, Ajmer, and their workmen, which was received by the Western Railway, Ajmer, and their workmen, which was received by the Central Government on the 26th September, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

केस नं. आई.टी. 16/82

केन्द्रीय सरकार श्रम तथा नियोजन मंत्रालय की अधिसूचना सं.

एल. 41011 (II)/81 डी-II (बी) दिनांक 26-3-82

डिवीजनल सैक्रेटरी, पश्चिम रेलवे कर्मचारी परिषद्, अजमेर।

—यूनियन

अनाम

1. महाप्रबंधक, पश्चिम रेलवे, चर्चंगट, बम्बई।

2. मंडल रेलवे रबंत्रक, पश्चिम रेलवे, अजमेर।

—नियोजकगण

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.

जे.एस.

यूनियन की ओर से :

श्री आर.सी. नारंग

नियोजकगण की ओर से :

श्री बी.एस. माथुर

दिनांक अर्वाइ :

27-5-88

अर्वाइ

केन्द्र सरकार ने निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनियमार्थ अपनी अधिसूचना सं. एल.-41011 (II)/81-डी-II (बी) दिनांक 26-3-82 के द्वारा औद्योगिक विवाद अधिनियम 1947 जिसे आगे अधिनियम कहा जायेगा, की धारा 10(1) (घ) के अंतर्गत प्रेषित किया है :

"Whether the action of the Railway Administration in terminating the services of 24 Khalasis doing the work of loading and unloading of coal under Loco Foreman, Loco Shed, Ajmer with effect from 16th December, 1979 is justified in view of Section 25-G of the Industrial Disputes Act? If not, to what relief the workmen are entitled?"

2. वाद प्राप्ति निर्देश इस न्यायाधिकरण में पंजीकृत किया गया एवं पक्षकारों को नोटिस जरिये पंजीकृत डाक भेजे गये। श्री सुरेन्द्र कुमार गोयल संयुक्त मंडल मंत्री पश्चिमी रेलवे कर्मचारी परिषद्, अजमेर ने प्रार्थी यूनियन की ओर से 24 कर्मचारों का संयुक्त स्टेटमेंट आफ क्लेम निम्न प्रकार से प्रस्तुत किया है :—

यह कि पश्चिमी रेलवे कर्मचारी परिषद् एक पंजीकृत संस्था है जिसने कि अधिनियम की धारा 22 के अंतर्गत एक हड़ताल नोटिस दिया था जिसके फलस्वरूप समझौता वार्ता केन्द्रीय सहायक श्रम आयुक्त, अजमेर के यहाँ प्रारम्भ हुई। मीजूबा विवाद में श्रमिक लाडू एवं अन्य 23 फोरमैन जिन्हें प्रागे प्रार्थी कर्मकार के नाम से सम्बंधित किया जायेगा,

यै सभी कर्मकार सन् 1978 में एवजी खलसी के रूप में भर्ती किये गये थे। इन सभी कर्मकारों को रेलवे के पत्र में ई/एल/615/3 भाग-6 दिनांक 24-8-79 के अनुसार अस्थाई हैसियत प्रदान की गई। आगे यह भी व्यक्त किया कि इन सभी कर्मचारियों ने एक कलैण्डर वर्ष में 240 दिन कार्य किया तत्पश्चात् रेलवे के पत्र सं. ई/एल/615/4 दिनांक 17-11-79 को रेल सेवा में निष्कासित किये जाने का आदेश पारित किया गया और इस प्रकार इन कर्मचारियों का सेवा से निष्कासित किये जाने पर कोई छंटनी का मुआवजा नहीं दिया। आगे आरोप लगाया कि रेलवे प्रशासन ने धारा 25 (जी) का खुला उल्लंघन किया। आगे अभिवचन में यह भी रखा कि इन 24 कर्मकारों के पश्चात् जो बी.एम.ई., अजमेर के अधीन रेल सेवा में लिये गये थे उनको नौकरी से निकाला जाना चाहिए था मगर उन्हें नहीं निकाला गया। उक्त सभी फोरमैन को नौकरी से हटाकर धारा 25 जी, ई का उल्लंघन किया जाना चाहिए किया और अंत में प्रार्थना की कि उन्हें पुनः नौकरी पर लिये जाने के आदेश रेलवे को दिये जायें तथा नौकरी से निकालने की तिथि 17-12-79 से 6-7-82 तक का वेतन भुगतान दिलाया जावे एवं 6-7-82 से प्रकरण के तय होने की तिथि तक वेतन भुगतान के आदेश आगे दिये जायें। यह भी प्रार्थना की कि नौकरी से हटाने की तिथि 17-12-79 से बरिष्ठता प्रदान की जावे तथा उसके साथ ही वेतन के साथ-साथ छुट्टी पास आदि और सभी प्रकार की सुविधायें प्रदान कराने के आदेश भी रेलवे को दिये जायें।

3. दिनांक 30-11-82 को अप्रार्थीगण की ओर से मंडल कार्मिक अधिकारी पश्चिम रेलवे अजमेर ने उत्तर क्लेम इस प्रकार पेश किया कि प्रार्थी यूनियन का पंजीकृत होना स्वीकारा। विवाद को केन्द्रीय सरकार द्वारा निर्देशित किया जाना और विवाद लाडू व उससू साथ 23 अन्य साथियों से संबंधित होना माना। मगर 24 कर्मकारों को लगाये जाने की वास्तविक तिथि रेलवे ने उनके पेश किये गये शिड्यूल के अनुसार होना पेश की जिनमें कुछ कर्मकारों को 1978 में व अन्य शेष को 1979 में लिया जाना व्यक्त किया। आगे यह व्यक्त किया कि श्रीमती नाथी पत्नी रामलाल व बीरमा विशना को अस्थाई स्टेट्स नहीं दिया गया था। आगे यह भी एतराज किया कि 24 प्रार्थी कर्मकारों में से सर्वश्री लाडू पुल भोला, श्रीमती नाथी पत्नी रामलाल, सुरेन्द्रपाल पुत्र गणेशी लाल एवं बिरमा विशना ने एक कलैण्डर वर्ष में 240 दिन कार्य नहीं किया। आगे यह भी एतराज लिया कि प्रार्थी कर्मकारों को एक विशेष कार्य के लिए लगाया गया था जब ठेकेदारों का ठेका अंतिम रूप से खत्म हो गया तो इन कर्मकारों को 18-11-79 को एक-एक महीने का नोटिस दिया जिसमें कि इस बात का विशेषतः उल्लेख किया गया था कि कार्य न होने के कारण उनकी नोटिस अवधि समाप्ति पर सेवा समाप्त की जायेगी। इस प्रकार प्रार्थीगण की सेवा समाप्ति काम न होने के कारण की गई और काम न होने की सूरत में अप्रार्थी रेलवे प्रबंधकों

की प्रार्थीगण को लगाये रखने के लिए विवश नहीं किया जा सकता। इस संबंध में इस बात पर भी बल दिया गया कि लोको डिपार्टमेंट द्वारा डीजल इंजन लगाने के कारण रेलवे प्रशासन के लिए प्रार्थी कर्मचारियों को समायोजित करना काफी कठिन हो गया और इसी कारण से दूसरे काम पर भी प्रार्थीगण को लगाना संभव नहीं रहा; आगे यह भी व्यक्त किया कि छंटनी का मुआवजा प्रार्थीगण के संबंध में जिस प्रकार देय था वह लगाया था और उन सभी को मुआवजा देने के लिए पेशकश की गई मगर उन्होंने ये जानकर मुआवजे की राशि लेने से इन्कार कर दिया और इस प्रकार की इन्कारी उन्होंने सर्व श्री बी.एन. जेसवाल लोको फोरमन, कनाश चंद पहाड़िया वरिष्ठ खजांची एवं मौभागमल लोढ़ा डी.पी.एम. के सामने की जबकि रेलवे प्रशासन ने औद्योगिक विवाद अधिनियम के सभी प्रावधान की पूर्ति करने का पूरा प्रयास किया। इस बात से भी इन्कार किया कि रेलवे प्रशासन ने धारा 25 जी अधिनियम का उल्लंघन किया हो। और इस तथ्य को भी नकारा कि प्रार्थी कर्मचारियों ने किसी भी कनिष्ठ व्यक्ति को रख लिया हो और उन्हें निकाल दिया गया हो यहां इसी प्रकार धारा 25 (एच) का भी कोई उल्लंघन नहीं किया गया था इसलिए प्रार्थीगण का क्लेम खारिज किया जाये। इस उत्तर क्लेम के साथ कर्मचारियों की एक लिस्ट भी पेश की गई।

4. प्रार्थी यूनियन की ओर से डब्ल्यू-1 ओमचंद, डब्ल्यूडब्ल्यू-2 प्रेमसिंह, डब्ल्यूडब्ल्यू-3 चंदन पुत्र भोलाराम, डब्ल्यूडब्ल्यू-4 रमेश चंद्र पुत्र दुर्जनसिंह, डब्ल्यूडब्ल्यू-5 खेम सिंह पुत्र श्री हीरालाल, डब्ल्यूडब्ल्यू-6 रामचंद पुत्र श्री भोलाराम डब्ल्यूडब्ल्यू-7 रमेश कुमार पुत्र लल्लूराम, डब्ल्यूडब्ल्यू-8 मनोहरलाल पुत्र श्री रामलाल डब्ल्यूडब्ल्यू-9 शान्तीलाल पुत्र मिट्ठूलाल डब्ल्यूडब्ल्यू-10 बन्नी नाथ, पुत्र लाडू नाथ, डब्ल्यूडब्ल्यू-11 लाडू पुत्र भोला, डब्ल्यूडब्ल्यू-12 गोपी पुत्र जोरा, डब्ल्यूडब्ल्यू-13 लाडू सिंह पुत्र काना डब्ल्यूडब्ल्यू-14 कन्हैयालाल पुत्र नत्थूराल डब्ल्यूडब्ल्यू-15 हरी पुत्र रूपा, डब्ल्यूडब्ल्यू-16 दुर्गा पुत्र अर्जन, डब्ल्यूडब्ल्यू-17 भोला मंगला, डब्ल्यूडब्ल्यू-18 मारमल पुत्र बीजा, डब्ल्यूडब्ल्यू-19 बिरमा गिना डब्ल्यूडब्ल्यू-20 हरपाल सिंह पुत्र श्री नमीसिंह डब्ल्यूडब्ल्यू-21 श्रीमती सरवती पत्नी हरजी, डब्ल्यूडब्ल्यू-22 श्रीमती नाथी देवी पत्नी रामलाल, डब्ल्यूडब्ल्यू-23 सुरेन्द्र पाल पुत्र श्री गणेशीलाल अप्रार्थी रेलवे प्रशासन की ओर से एमडब्ल्यू-1 रामकरण शर्मा पुत्र श्री श्रीलाल, एमडब्ल्यू-2 बी.एन. जेसवाल पेश हुए। मैंने बहस पक्षकारान मृत्ती है पत्रावली का अवलोकन किया है।

5. न्यायालय के समक्ष विचारणीय प्रश्न यह है कि आया इस प्रकरण में 24 खलामी जो कोयले की लोडिंग अनलोडिंग का कार्य लोको शेड, अजमेर के यहां कर रहे थे, की सेवाएं रेलवे प्रशासन द्वारा धारा 25-जी अधिनियम के तहत दिनांक 16-12-79 को समाप्त करना न्यायसंगत था या नहीं।

6. उपरोक्त प्रश्न को निर्णित करने के लिए हमें पता-वली पर आई साक्ष्य को गौर करना है। सर्व प्रथम यह 2544 GI/88-6.

स्पष्ट है कि निर्देशन की प्राप्ति बाद संयुक्त संझल मंत्री, पश्चिम रेलवे कर्मचारी परिषद्, अजमेर द्वारा जो स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया उसके साथ जो कर्मचारियों की सूची दी गई उसमें केवल 23 ही कर्मचारियों की ओर से स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया इसलिए इस प्रकरण के संबंध में केवल 23 ही कर्मचारियों के क्लेम काबिल गौर होंगे। इस संबंध में सामान्य साक्ष्य प्रार्थीगण की ओर से इस आशय की प्रस्तुत की गई कि उनको जो प्रत्येक के शपथ पत्र में नियुक्ति की तिथि दी हुई है उसके मुताबिक कोलमैन के पक्ष पर पश्चिम रेलवे अजमेर की ओर से दैनिक वेतन भांगी अस्थाई नियुक्ति दी गई और उसके पश्चात् उन्हें स्थाई दर्जा प्राप्त हो गया। तत्पश्चात् दिनांक 17-11-79 को नोटिस डन आया का उन्हें दिया। और दिनांक 16-12-79 को उन्हें लोको फोरमन ने नोकरी में लेने से इन्कार किया। प्रत्येक कर्मकार ने उसके शपथ पत्र के मुख्य परीक्षण में यह भी व्यक्त किया कि अप्रार्थी के पास कार्य उपलब्ध था और उस कार्य को ठेकेदार से करवाने के कारण उन्हें नोकरी पर नहीं लिया न ही उन्हें अन्य स्थान पर कार्य दिया गया। दिनांक 19-9-80 को समझौता बातों के दौरान वैकल्पिक कार्य के निमित्त बनाया गया पर वह भी नहीं दिया गया और आगे यह भी व्यक्त किया कि अप्रार्थी के पास उनके बात में लगाये गये कमकार कार्य कर रहे थे, परन्तु उन्हें कार्य पर नहीं लिया गया। प्रति परीक्षण में 23 में से करीब सभी ने यह तथ्य व्यक्त किया कि प्रत्येक को 6 रोज का वेतन नहीं मिला और यह भी स्वीकार किया कि इन सेवा समाप्ति के बाद वे कोई न कोई कार्य कर रहे हैं। अप्रार्थी नियोजक की ओर से एम. डब्ल्यू-1 श्री रामकरण शर्मा ने यह व्यक्त किया कि वह वर्ष 1979 में लोको शेड, अजमेर में लिफिक के पद पर कार्य कर रहा था और वह कोलमैन के कार्य का लेखा जोखा रखता था व पेमेंट आदि करता था। आगे व्यक्त किया कि सन् 1978-79 में कामगारों को कोयले की उतराई का ठेका समाप्त हो जाने के कारण दैनिक वेतन पर अस्थाई रूप से कार्य करने के लिए लगाया था और 17-12-79 को पुनः कोयले की उतराई व भराई का ठेका दे दिया गया। आगे यह भी व्यक्त किया कि कामगारों को छंटनी का नोटिस 17-11-79 को दिया गया है एवं उनके समस्त वेतन व मुआवजा का भुगतान 17-12-79 व 19-12-79 को लगातार ऑफर किया गया किन्तु कामगारों ने भुगतान लेने से मना कर दिया। आगे जाहिर किया कि सभी कामगारों के वेतन का बिल उसने बनाया था और पेमेंट न स्वीकार करने की बाबत पत्र उसने 18-12-79 को लिखा था जिस पर लोको फोरमन के हस्ताक्षर हैं। आगे यह नकारा कि इन कामगारों से कनिष्ठ कोई भी व्यक्ति लोको शेड अजमेर में कार्यरत हो। यह भी कहा कि श्रीमती नाथी रामलाल ठेके पर काम करती है, लाडू पुत्र भोला ने 117 दिन, सुरेन्द्रपाल गणेशीलाल ने 193 दिन व बीरमा बिश्ना ने 160 दिन कार्य किया।

6. शीर्ष पत्रकारों को उत्तर ने कुछ रखा निविवाद हो जाते हैं। यह कि प्रार्थी 23 जनो को कोलमैन के पद पर पश्चिम रेलवे अजमेर द्वारा दैनिक बेतन पर अस्थाई तौर पर लगाया गया था। तथ्यश्चात् उन्हें स्थाई दर्जा दिया गया। 23 कर्मकारों में से प्रत्येक को 17-11-79 को एक नोटिस प्राप्त हो गया। प्रत्येक श्रमिक को लोको फोरमैन ने 16-12-79 को नौकरी पर लेने मना कर दिया और उस रोज कोई मुआवजा भत्ता भुगतान नहीं किया गया। यद्यपि अप्रार्थी को और से प्रति-रक्षा में यह एतराज लिया गया है कि प्रार्थीगण ने मुआवजा लेने से मना कर दिया था। यह तथ्य भी निविवाद है कि उपरोक्त 23 कर्मकारों में से श्रीमति नाथी-रामलाल, श्री सुरेन्द्रपाल, श्री लावू पुत्र भोला व श्री बीरमा बिशना के के अतिरिक्त अन्य 19 कामगारों ने सेवा समाप्ति 16-12-79 से पूर्व एक कैलेंडर वर्ष में 240 दिन से अधिक निरन्तर कार्य किया था और वे सभी इस तरह औद्योगिक कर्मकार बन गये थे।

7. अब यह देखना है कि इन 19 व्यक्तियों की सेवा समाप्ति के समय क्या धारा 25 एफ के तहत उन्हें क्षतिपूर्ति भत्ता दे दिया गया था या नहीं। यहाँ राम करण शर्मा एम. डब्ल्यू. व श्री बी. एल. जैसवाल की साक्ष्य काबिल गौर है जिन्होंने यह कहा है कि कर्मकारों की छटनी का मुआवजा आफर किया गया मगर उन्होंने लेने से इन्कार करा दिया। अप्रार्थी के इन दोनों गवाहान की साक्ष्य से यह स्पष्ट है कि ये मुआवजा देने की बात 18 व 19-12-79 को की गई है जिससे यह स्पष्ट है कि सेवा समाप्ति के समय यानि 16-12-79 को कोई मुआवजा कर्मकारों को नहीं दिया गया। जो इमरजेंट पे शीट कर्मकारों की अदायगी के संबंध में बनाई व इस पर जो हस्ताक्षर किये उन पर 18-12-79 के हस्ताक्षर हैं जबकि इमरजेंट पे शीट 18-12-79 को बनाई गई तो इससे दो दिन पूर्व यानि 16-12-79 को क्षति पूर्ति भत्ता आफर किये जाने का प्रश्न ही नहीं उठता है। अप्रार्थी के गवाहान ने जो क्षति पूर्ति देने की बात कही है वह 18 व 19-12-79 को आफर करने की बात कही है जिससे निश्चित तौर पर यह कह सकते हैं कि 16-12-79 को प्रार्थी कर्मकारों की छटनी करते समय कोई मुआवजा नहीं दिया। इस प्रकार धारा-25 एफ अधिनियम के आशापक प्रवधान का उल्लंघन उक्त 19 कर्मकारों के संबंध में निश्चित तौर पर प्रमाणित पाया जाता है जिन्होंने 240 दिन पूरे कर लिये थे। श्री बी. एल. जैसवाल ने उसके प्रति परीक्षण में इन शब्दों में स्वीकार किया है:

"मैंने कोयला भरने और कचरा साफ करने को 43 आवामी 1979 में रखा था, मैंने नियुक्ति के लिए कोई स्पेसिफिक पीरियड नहीं बताया था। मैंने

वर्कर्स को हटाने समय कोई नोटिस नहीं दिया। भुगतान पे शीट के अनुसार दिया गया इमरजेंट पे शीट मैंने पेश की है, पेमेंट 18-12-79 को दी गई है। पेमेंट का रिफ्यूजल दर्ज नहीं है।"

श्री जैसवाल की साक्ष्य से एक तो यह स्पष्ट हो जाता है कि जब भी प्रणीगण कर्मकारों को उन्होंने नियुक्ति दी तो यह नहीं बताया कि उनकी नियुक्ति निश्चित समय के लिए की जा रही है। गौरा कि प्रारंभ में सेवा संबंध एक निश्चित समय के लिए तय हो ऐसा श्री जाड मवाल की साक्ष्य में प्रमाणित नहीं होता है। दूसरे श्री जैसवाल की जिरह से यह भी प्रमाणित होता है कि पेमेंट जो आफर की गई वह 18-12-79 को की गई गयी कि छटनी के समय न. officer की पेमेंट नहीं दी गई। इस प्रकार 19 कर्मकारों के निस्सन धारा 25-एफ अधिनियम का स्पष्ट उल्लंघन पाया जाता है।

8. यद्यपि श्रीमती नाथी रामलाल, लावू पुत्र भोला, सुरेन्द्रपाल गणेशीलाल व श्री बीरमा बिशना की सेवा समाप्ति से पूर्व उनके द्वारा एक कैलेंडर वर्ष में 240 दिन निरन्तर काम करना प्रमाणित नहीं होता है लेकिन अप्रार्थी की साक्ष्य से यह प्रमाणित नहीं होता कि इन चारों को और अन्य 19 कर्मकारों की सेवा समाप्ति से पूर्व कोई वरिष्ठता सूची बनाई गई हो या रेलवे प्रशासन को उनकी सेवा समाप्ति के बारे में कोई सूचना दी गई हो। औद्योगिक विवाद (केन्द्रीय) नियमों 1957 के नियम 77 के अनुसार उन सभी कर्मकारों की छटनी से सात दिन पूर्व लिस्ट तैयार करना और उसे पब्लिश करना आवश्यक है। यह नियम इस कारण से बनाया गया है कि धारा 25 जी अधिनियम पूरे तौर से लागू हो सके मगर यहाँ कर्मकारों की छटनी से 7 दिन पूर्व कोई लिस्ट नहीं बनाई गई है। औद्योगिक क्षेत्र में कर्मकारों की छटनी करने से पहले इन शर्तों का पूरा किया जाना आवश्यक है। यह कि छटनी किए जाने से वह पहले नियोजक धारा 25 एफ और 25 एन के प्रवधानों की पालना करे। और इसके अतिरिक्त यह भी आवश्यक है कि नियोजक छटनी करने से पूर्व धारा 25-जी अधिनियम की भी परिपालना करे क्योंकि धारा 25 जी 25 एफ और 25 एन पर आधारित न होकर अपने आप में एक स्वतंत्र संवर्णन है। डब्ल्यू. एल. एन. यू. सी. 1978, 223 में यह विनिश्चित किया गया है:

"The respondent was retrenched whereas the persons junior to him were retained in the employment without recording any reason. Obviously, in the present case the provisions of Section 25-G have not been complied with and so we have no hesitation to state that failure to comply with Section 25G will make a retrenchment of the respondent invalid."

1984 तैव, आई. सी. 645 श्री गफूकार एवं अन्य बनाम यूनियन आफ इण्डिया में यह विनिश्चित है :

"Rule 77 requiring maintenance of seniority list of workmen—has been included in the rules so that the objective of Section 25G of the Industrial Dispute Act may be effectively achieved. The minimum time of seven days allowed for this purpose is not unnecessarily long, for the workman, should get an adequate opportunity to scrutinise the correctness of the seniority list before he is thrown out. Viewed from this angle, it should be held that the requirement mentioned in rule 77 is mandatory and its violation renders an order of retrenchment illegal."

9. मौजूदा प्रकरण में अप्रार्थी रेलवे प्रशासन द्वारा कर्मकारों को कोई वरिष्ठता सूची बनाना या प्रकाशित किया जाता नहीं पाया जाता है और न ही केन्द्रीय सरकार को इस छंटनी के बारे में सूचित किया। न उपलब्ध जगह पर उन्हें लगाया नियम 77 स्पष्टित धारा 25-जी अधिनियम का स्पष्ट उल्लंघन पाया जाता है। इस संबंध में प्रार्थीगण की साक्ष्य से यह भी प्रमाणित हो चुका है कि प्रार्थी रेलवे प्रशासन के पास कार्य उपलब्ध था जो उन्होंने ठेकेदार से करवाया। इसमें इस बात की संपुष्टि होती है कि प्रार्थी कर्मकार जिस कार्य को कर रहे थे। वह समाप्त नहीं हुआ था। इसके अतिरिक्त श्री प्रेम सिंह की साक्ष्य से यह प्रमाणित होता है कि अप्रार्थी के पास उनके बाद में लगाये गये श्रमिक भी कार्य कर रहे थे। इससे यह भी स्पष्ट है कि इन प्रार्थीगण से वरिष्ठ व्यक्तियों को काम में रहने दिया गया और उन्हें नहीं बुलाया गया इसके अतिरिक्त श्री रमेश चन्द्र चन्द्र डब्ल्यू डब्ल्यू 4 की साक्ष्य से यह भी प्रमाणित है कि दिनेश पुत्र महीवाल को उनके हटाने के बाद रखा एवं श्री रघुनान्दन को भी रखा था, इसमें भी धारा 25 एफ का उल्लंघन पाया जाता है।

10. उपरोक्त साक्ष्य के विवेचन में श्रीमति नार्या रामलाल, सुरेन्द्रपाल पुत्र गणेशीलाल, लाडू पुत्र भोला, वीरमा, विषना के मामले में विशेष तौर से धारा 25 जी अधिनियम और औद्योगिक विवाद (केन्द्रीय) नियम 1957 के नियम 77 का उल्लंघन पाया जाता है। इसके अतिरिक्त शेष 19 कर्मकारों के मामले में दिनांक 16-12-79 को उनकी सेवा समाप्त करते समय धारा 25-जी अधिनियम व नियम 77 के अतिरिक्त धारा 25 एफ अधिनियम का भी उल्लंघन पाया जाता है। ऐसी सूत्र में सभी कर्मकारों की छंटनी अवैध पाई जाती है। इस अवैध छंटनी के कारण प्रत्येक कर्मकार सेवा समाप्ति की तारीख से पुनः सेवा में बहाल होने का अधिकारी है। चूंकि प्रत्येक कर्मकार की साक्ष्य से प्रमाणित हुआ है कि सेवा समाप्ति के बाद वे अपने अपने काम में व्यस्त रहे हैं। यानि कि वे गेनकुल एम्प्लायमेंट में रहे हैं। ऐसी सूत्र में सभी कर्मकारों को 16-12-79 से सेवा में बहाल किया

जाने की तिथि तक का बकाया वेतन यानि "बैक वेज" दिया जाता उचित नहीं होगा।

11. अतः मामले हावा में निम्न प्रकार से हवाई पारित किया जाता है। रेलवे प्रशासन अजमेर का 23 खलामा सर्वश्री लाडू पुत्र भोला, मनोहर लाल पुत्र बाबूनाथ, रामलाल, बदरी नाथ पुत्र बाबूनाथ, प्रेम सिंह पुत्र हर प्रसाद, खेम सिंह पुत्र हीरा लाल, लाडू पुत्र काना, दुर्गा सिंह पुत्र अर्जुन, हरी पुत्र रूपा, भोला पुत्र मंगला, गोषो पुत्र जोग, रमेश कुमार पुत्र लालू राम, श्रीमति सखती पत्नी हरी जो, श्री शांति लाल पुत्र मोहन लाल, श्री मूल चंद पुत्र भोलाराम, चन्दन पुत्र भोला राम, राम चन्द्र पुत्र भोला राम, हरपाल पुत्र भीम सिंह श्री रमेश चन्द्र पुत्र दुर्जन सिंह, श्रीमति, नत्थी पत्नी रामलाल, सुरेन्द्रपाल पुत्र गणेशीलाल, बनवारी लाल पुत्र श्री हीरा लाल श्री मारमल एवं श्री विरमा जो कि लोको फोरमैन, लोको शैड अजमेर के तहत कोयल की लॉडिंग अनलोडिंग का कार्य कर रहे थे, उनकी सेवा दिनांक 16-12-79 से समाप्त करना अवैध एवं अनुचित था। सभी प्रार्थीगण दिनांक 16-12-79 से अपने पूर्व पदों एवं पूर्व वेतन पर सेवा में बहाल होने के अधिकारी हैं। दिनांक 16-12-79 से सेवा में बहाल होने की तिथि के मध्य "नो वर्क नो पे" के बेसिस पर और उनके इस अवधि में गेनकुल एम्प्लायमेंट में रहने के कारण कोई इस अवधि बकाया वेतन देय नहीं होगा। साथ ही प्रत्येक प्रार्थीगण को सेवा समाप्ति से पूर्व जो 6 दिन का वेतन नहीं दिया गया है वह भी अप्रार्थी से पावेंगे।

12. अवाई केन्द्र सरकार को प्रकाशनार्थ नियमानुसार सेवा जवाबे।

प्रताप सिंह यादव, पीठासीन अधिकारी

[सं. 41011/11/81—इंग्ल-II(बी)]

नई दिल्ली, 6 अक्टूबर, 1988

का. आ. 3145—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वयेण में, केन्द्रीय सरकार डाक विभाग के प्रबन्धन से सम्बद्ध नियोजकों और उसके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-88 को प्राप्त हुआ था।

New Delhi, the 6th October, 1988

S.O. 3145.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Department of Post and their workmen, which was received by the Central Government on the 28th September, 1988.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI.

I.D. No. 27/88

In the matter of dispute between :

Shri Radhey Shyam
S/o Shri Sri Chand,
Vill. Jharoda Kalan,
P.O. C.R.P. Camp. New Delhi-110072.

Versus

1. Post Master General,
Mohan Singh Place,
Connaught Place, New Delhi.
2. Senior Supdt. of Post Office,
South West Division,
New Delhi.

APPEARANCES :

Shri Jog Singh for the workman.
Shri Behari Lal for the Management.

AWARD

The Central Government in the Ministry of Labour vide its order No. L-40012/16/87-D.II(B) dated 3rd March, 1988 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Post Master General, New Delhi in terminating Shri Radhey Shyam from service with effect from 17-12-1986 is legal/justified. If not, to what relief the workman concerned is entitled to?”

As this reference is being decided on the basis of settlement, it is not necessary to set forth in detail the pleadings of the parties. Suffice it to say that the workman filed statement of claim dated 2-5-88, the Management filed written statement dated 28-7-88 and the workman filed a rejoinder dated 23-8-88. On 23-8-88 Shri Behari Lal on behalf of the Management made statement that they were prepared to take the workman back in service with the benefit of continuity of service from the date of initial appointment but without back wages and that the workman could join duty from the next day and further that the workman shall be duly considered for regular appointment in accordance with the scheme prepared under the direction of the Hon'ble Supreme Court of India. This offer was accepted by the workman.

3. As per the statement of parties I hereby make an award to the effect that the workman shall be reinstated in service with continuity of service but without any back wages and the workman shall also be considered for regular appointment in accordance with the scheme prepared by the Management under the directions of the Hon'ble Supreme Court. The workman shall join duty without loss of time. This reference stands disposed off accordingly.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

G. S. KALRA, Presiding Officer

23rd August, 1988.

[No. L-40012/16/87-D.II(B)]

का. आ. 3146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-88 को प्राप्त हुआ था।

S.O. 3146.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Department of Post and their workmen, which was received by the Central Government on the 28th September 1988.

ANNEXURE

BEFORE SHRI G. S. KALRA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI

I. D. No. 24/88

In the matter of dispute between :

Shri Naresh Kumar c/o Shri R. S. Rakra, General Secretary I.N.T.U.C., Sonapat Distt. INTUC Bhawan, M. T. Sonapat.

Versus

The Senior Superintendent of Post Offices, New Delhi South West Division, Chankaya Puri, New Delhi.

APPEARANCES :

Shri Jog Singh for the workman.
Shri H. S. Negi for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-40012/17/87-D.II(B) dated 3rd March, 1987 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of Post Master General, New Delhi in terminating Shri Naresh Kumar from service w.e.f.

17-12-1986 is legal/justified? If not, to what relief the workman concerned is entitled to?"

2. As the reference is being decided on the basis of settlement, it is not necessary to set forth in detail the pleadings of the parties. Suffice it to say that the workman filed statement of claim dated 2-5-88, the Management filed written statement dated 28-7-88 and the workman filed a rejoinder dated 23-8-88. On 23-8-88 Shri H. S. Negi on behalf of the Management made statement that they were prepared to take the workman back in service with the benefit of continuity of service from the date of initial appointment but without back wages and that the workman could join duty from the next day and further that the workman shall be duly considered for regular appointment in accordance with the scheme prepared under the directions of the Hon'ble Supreme Court of India. This offer was accepted by the workman.

3. As per the statement of parties, I hereby make an award to the effect that the workman shall be reinstated in service with continuity of service but without any back wages and the workman shall also be considered for regular appointment in accordance with the scheme prepared by the Management under the directions of the Hon'ble Supreme Court. The workman shall join duty without loss of time. The reference stands disposed of accordingly.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

23rd August, 1988.

G. S. KALRA, Presiding Officer
[No. L-40012/17/87-D.II(B)]

का. आ. 3147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाक विभाग के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-88 को प्राप्त हुआ था।

S.O. 3147.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Department of Post and their workmen, which was received by the Central Government on the 28th September, 1988.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL; NEW DELHI

I.D. No. 26/88

In the matter of dispute between :

Shri Rattan Singh S/o Shri Dharam Singh, Village Dinpur, P. O. Nazafgarh, New Delhi-110043.

Versus

1. Post Master General, Mohan Singh Place, Connaught Place, New Delhi.
2. Senior Supdt. of Post Offices, South West Division, New Delhi.

APPEARANCES :

Shri Jog Singh for the workman.

Shri H. S. Negi for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-40012/18/87-D.II(B) dated 3rd March, 1988 has referred the following industrial dispute to this Tribunal for adjudication

"Whether the action of the management of Post Master General, New Delhi in terminating Shri Rattan Singh from service with effect from 17-12-1986 is legal/justified. If not, to what relief the workman concerned is entitled to?"

2. As this reference is being decided on the basis of settlement it is not necessary to set forth in detail the pleadings of the parties. Suffice it to say that the workman filed statement of claim dated 2-5-88, the Management filed written statement dated 28-7-88 and the workman filed a rejoinder dated 23-8-88. On 23-8-88 Shri H. S. Negi on behalf of the Management made statement that they were prepared to take the workman back in service with the benefit of continuity of service from the date of initial appointment but without back wages and that the workman could join duty from the next day and further that the workman shall be duly considered for regular appointment in accordance with the scheme prepared under the directions of the Hon'ble Supreme Court of India. This offer was accepted by the workman.

3. As per the statement of parties, I hereby make an award to the effect that the workman shall be reinstated in service with continuity of service but without any back wages and the workman shall also be considered for regular appointment in accordance with the scheme prepared by the Management under the directions of the Hon'ble Supreme Court. The workman shall join duty without loss of time. This reference stands disposed of accordingly.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Govt. for necessary action at their end.

23rd August, 1988

G. S. KALRA, Presiding Officer
[No. L-40012/18/87-D.II(B)]

का. आ. 3148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली

के पंजाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-88 प्राप्त हुआ था।

S.O. 3148.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Department of Post and their workman, which was received by the Central Government on the 28th September, 1988.

ANNEXURE

BEFORE SHRI G. S. KALRA; PRESIDING OFFICER; CENTRAL GOVT. INDUSTRIAL TRIBUNAL; NEW DELHI

I.D. No. 28/88

In the matter of disputes between :

Shri Rajender Singh S/o Jagdish Singh, F-286 Lado Sarai, Mehrauli, New Delhi-30.

Versus

1. Post Master General, Mohan Singh Place, Connaught Place, New Delhi.
2. Senior Supdt. of Post Offices, South West Divisions, New Delhi.

APPEARANCES

Shri Jog Singh for the workman.

Shri H. S. Negi for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-40012/19/87-D.II(B) dated 3rd March, 1988 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Post Master General, New Delhi in terminating Shri Rajender Singh from service with effect from 24-12-1986 is legal/justified? If not, to what relief the workman concerned entitled to?"

2. As this reference is being decided on the basis of settlement, it is not necessary to set for in detail the pleadings of the parties. Suffice it to say that the workman filed statement of claim dated 21-6-88, the Management filed written statement on 1-8-88 and the workman filed a rejoinder dated 23-8-88. On 23-8-88 Shri H. S. Negi on behalf of the Management made statement that they were prepared to take the workman back in service with the benefit of continuity of service from the date of initial appointment but without back wages and that the workman could join duty from the next days and further that the workman shall be duly considered for regular appointment in accordance with the scheme prepared under the directions of the Hon'ble Supreme Court of India. This offer was accepted by the workman.

3. As per the statement of parties, I hereby make an award to the effect that the workman shall be re-instated in service with continuity of service but without any back wages and the workman shall also be considered for regular appointment in accordance with the scheme prepared by the Management under

the directions of the Hon'ble Supreme Court. The workman shall join duty without loss of time. This reference stands disposed of accordingly.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Govt. for necessary action at their end.
23rd August, 1988.

G. S. KALRA, Presiding Officer
[No. L-40012/19/87-D.II(B)]

का. आ. 3149—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिपार्टमेंटल कैंटीन डी. जी. (एस.) के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंजाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-88 प्राप्त हुआ था।

S.O. 3149.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Departmental Canteen D.G. (S) Canteen and their workman which was received by the Central Government on the 28th September, 1988.

ANNEXURE

BEFORE SHRI G.S. KALRA; PRESIDING OFFICER; CENTRAL GOVT. INDUSTRIAL TRIBUNAL; NEW DELHI

I.D. No. 77/84

In the matter of dispute between :

Shri Gopal Ram Arya, 48-A, D.D.A. Shum Quarters, Mata Sundri Road, New Delhi-110002.

Versus

They Hony. Secretary, D. G. (S) Canteen, East Block No. V, RK Puram, New Delhi.

APPEARANCES :

Shri H. K. Pathak for the workman.

Shri S. S. Gupta for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012(10)/82-D.II. B dated 12-10-84 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of D.G. (S) Departmental Canteen, East Block No. V, R.K. Puram, New Delhi in terminating the services of Shri Gopal Ram Arya, Ex-Counter Clerk with effect from 20th February, 1981 is justified? If not, to what relief is the workman entitled?"

2. The workman joined service with the Management on 15-8-76. He was placed under suspension w.e.f. 25-11-80 pending the enquiry for the charges of indiscipline and misbehaviour. He was served with a charge sheet on 15-12-80, to which the workman submitted reply dated 27-12-80. A regular domestic enquiry was conducted and on the basis of the report of the Enquiry Officer services of the workman were terminated w.e.f. 20-2-81.

3. The workman has challenged his termination as illegal and unjustified on the ground that he being an industrial worker was not governed by the CCS Rules, Fundamental Rules and Conduct Rules which are applicable to the government employees. Therefore, he prayed for his reinstatement with continuity of service and with full back wages. The Management justified the order of termination and submitted that the workman was governed by the CCS (CC&A) Rules and that the services of the workman were terminated after holding a proper domestic enquiry under the procedure laid down and after affording full opportunity to the workman to defend himself and by following the rules of natural justice. The workman has not disclosed as to how the enquiry held against him was bad.

4. Evidence of the parties had been recorded and the case was at the stage of arguments when Shri H. K. Pathak representative of the workman made statement on 6-9-88 that he had no instructions and that workman was not traceable. It is, therefore, apparent that the workman is not interested in pursuing the present reference. Hence this reference is disposed of for non-prosecution and No dispute award is given.

Further it is ordered that the requisite number of copies of this Award may be forwarded to the Central Government for necessary action at their end. 6th September, 1988.

G. S. KALRA, Presiding Officer
[No. I-42012/10/82-D.II(B)]

नई दिल्ली, 7 अक्टूबर, 1988

क्र. भा. 3150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार पोस्ट मास्टर जनरल, बिहार, पटना के प्रबन्धनत्व में सम्बद्ध नियोजकों और उनके कामकाजों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, न. 1 धनबाद के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-9-88 को प्राप्त हुआ था।

New Delhi, the 7th October, 1988

S.O. 3150.—In pursuance of section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, No. 1, Dhanbad, in the industrial dispute between the employers in relation to the management of Post Master General Bihar, Patna and their workmen, which was received by the Central Government on the 16th September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

REFERENCE No. 10 OF 1987

PARTIES :

Employers in relation to the management of Post Master General, Bihar, Patna

AND

Their Workmen

APPEARANCES :

For the Employers.—Shri V. N. Ram, Asstt. Supdt. of Post Office.

For the Workmen.—None.

STATE : Bihar. INDUSTRY : Post Office

Dated, the 26th August, 1988

AWARD

By Order No. L-40012/12/86-D.II(B) dated, the 1st September, 1987, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication.

“Whether the action of the management of Post Master General, Bihar, Patna in terminating Shri Bhariob Pd Singh from service w.e.f. 15-11-81 and not re-employment him as E.D. Packer is legal and justified? If not, to what relief & from what date, the concerned workman is entitled to?”

2. The case of the management of Post Master General, Bihar, as appearing from the written statement-cum-rejoinder submitted, is as follows :

The present reference is not maintainable since Bhariob Prasad Singh, so-called workman, is governed under special rule known as P&T EDAs (Conduct & Service) Rules, 1964 and not by provisions of Industrial Disputes Act. The Appointing Authority i.e. Sub-Divisional Inspector of Post-Offices, Central Sub-Division, Bhagalpur, notified the vacancy for appointment to the post of extra-departmental Packer Rajaun on 1-2-1980 and the last date fixed for receipt of the application was 12-2-1980. Laldhari Ram, who was holding the post of Inspector of Post-Offices, Central Sub-Division, Bhagalpur, appears to have appointed Bhariob Prasad Singh as ED Packer on 12-2-1980 and he himself was relieved of his duty on the same date. Due publicity for the vacancy was not given as per instruction of Director General of Post & Telegraph, New Delhi. However, Bhariob

Prasad Singh was allowed to join temporarily as Extra-Departmental Packer at Rajaun, but his appointment was illegal void abinitio and was made against the rules of the Department. P. N. Singh, Inspector of Post-Offices, Central Sub-Division, Bhagalpur, by order dated 15-3-1980 cancelled the appointment of Bhairob Prasad Singh and no notice was required to be given nor any reason was required to be assigned in support of the order. Rule 6 of P&T, EDAs (Conduct & Service) Rules 1964 envisages that the services of ED employees, who have not rendered more than three years continuous service from the date of their appointment, shall be liable to be terminated by the Appointing Authority without any notice. Bhairob Prasad Singh was never appointed as ED Packer, Rajaun after 15-3-1980. His service was terminated on 15-3-1980 and not on 15-11-1981. As a matter of fact Bhairob Prasad Singh did not apply for the post in pursuance to notification dated 5-4-1982 and only two candidates, namely, Chandra Kishore Prasad Singh and Gopal Prasad Singh applied for the post and the Appointing Authority appointed Chandra Kishore Prasad Singh on 26-4-1982 and Sri Singh joined the post on 30-4-1982. In the circumstances, it has been submitted by the management that its action is justified.

3. Bhairob Prasad Singh of village Bhusia, P. S. Rajaun, Dist. Bhagalpur, submitted his statement of claim-cum-written statement and his case is as follows :

He was appointed on 15-2-1980 as ED Packer by Inspector of Post Office Central Division against substantive vacancy and he joined the post on 14-2-1980. P. N. Singh, Inspector of Post Office, by his order dated 15-3-1980 terminated his service without any reason and without issuing any notice and chargesheet. On 19-3-1980 he was again engaged as ED Packer and he worked to the satisfaction of his superior. While acting as such he represented his case to the Regional Director of Postal Service, Ranchi against the high handed action of the Inspector, but to no effect. His service was ultimately terminated on 15-11-1981. But before terminating his service no notice was given to him nor was any reason assigning for termination of his service. He has put in more than 240 days service proceeding 12 months from the date of termination of his service and as such he is entitled to the relief under Section 25F of the Industrial Disputes Act. The management has appointed Chandra Kishore Singh in violation of the Industrial Disputes Act. In the circumstances, he has prayed that the action of the management in terminating his service be held as illegal and unjustified.

4. After the above reference regarding industrial dispute was received in the office of the Tribunal.

Bhairob Prasad Singh, the concerned workman appeared personally and filed a petition dated 14-9-87 praying for time to file written statement and he was granted time till 18-11-1987 to file written statement. On the date fixed he appeared and filed written statement. Next date was fixed on 26-11-1987 for filing written statement by the management. On that date Bhairob Prasad Singh, the concerned workman, appeared, but none appeared for the management. Anyway, the management was given time till 21-12-87 to file written statement. On 21-12-87 V. N. Ram, Asstt. Supdt. of Post Office appeared without letter of authority. He was directed to file letter of authority and written statement-cum-rejoinder by 15-1-88. The workman did not appear on that date. On 15-1-88 Shri Ram appeared and filed his letter of authority, but not the written statement-cum-rejoinder. The workman did not appear on that date. The management was directed to file written statement-cum-rejoinder by 15-2-88. On the date fixed Shri Ram appeared and filed written statement-cum-rejoinder. The workman did not appear on that date. The next date was fixed on 7-3-88 for filing rejoinder by the workman. On the date fixed he did not appear and notice was issued by registered post to him directing him to file rejoinder by 7-4-1988. The registered notice was, however, returned by postal authority with the remark "Depositor died. Return to the sender". In the circumstances, the management was directed to produce the death certificate of the concerned workman from the local Mukhiya. The management, in conformance to the order of the Court, has produced the death certificate of the concerned workman along with a petition of even date. The death certificate bears out that the concerned workman left mortal world on 6-12-87. The record bears out that immediately before his death the concerned workman appeared and filed written statement on 18-11-87. That being so, it appears that he died almost immediately after he filed his statement of claim.

5. The notice issued to him under registered post also bolsters the fact that the concerned workman is no more in the land of living because the return of postal authority is indicative of the fact that the concerned workman has expired.

6. Admittedly, Bhairob Prasad Singh was temporarily appointed Extra-Departmental Packer at Rajaun by Sri Laldhari Ram, Inspector of Post-Offices, Central Sub-Division, Bhagalpur by order dated 12-2-80. Bhairob Prasad Singh has stated that he joined the post on 14-2-80. It has been contended by the management that the appointment of Bhairob Prasad Singh was void abinitio. But the written statement of the management admits of the fact that Bhairob Prasad Singh was temporarily appointed by the Appointing Authority on 12-2-80. That being so, the position taken by the management that the appointment of Bhairob Prasad Singh was void abinitio does not stand the test of reason. However, it is an admitted fact that the service of Bhairob Prasad Singh was terminated by Office Order dated 15-3-80 issued by P. N. Singh, Inspector of Post Offices, Central Sub-Division, Bhagalpur. It is the case of Bhairob Prasad Singh that he was again engaged as Extra-Departmental Packer on 19-3-80 and worked till 15-11-81 when his service was again terminated. Here is no vestige of

evidence on record to prove this fact. As a matter of fact the management has taken the position that Bhairob Prasad was never appointed on 19-3-80 and his service was never terminated on 15-11-80 as claimed by him.

7. The crux of the question is whether the termination of service of Bhairob Prasad Singh by the management by order dated 15-3-80 is justified or not. I have stated that Bhairob Prasad had left the land of living. None of his heir has come forward to continue the present proceeding before this Tribunal. In the circumstances there is none to assail the action of the management in terminating the service of Bhairob Prasad Singh. This being so, I am constrained to pass the following award.

The action of the management of Post Master General, Bihar, Patna in terminating Bhairob Prasad Singh from service and not re-employing him as ED Packer is considered legal and justified in view of the fact that the present proceeding has not been continued.

In the circumstances of the case I award no cost.

Sd/-

S. K. MITRA, Presiding Officer

[No. L-40012/12/86-D.II(B)]

HARI SINGH, Desk Officer

नई दिल्ली, 6 अक्टूबर, 1988

का. आ. 3151.—औद्योगिक विवाद अधिनियम, 1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड कॉमर्शियल बैंक बम्बई के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22 सितम्बर 1988 को प्राप्त हुआ था।

New Delhi, the 6th October, 1988

S.O. 3151.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1 Bombay as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of United Commercial Bank, Bombay and their workmen, which was received by the Central Government on the 22nd September, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

Reference No. CGIT-33 of 1987

PARTIES :

Employers in relation to the management of United Commercial Bank, Bombay.

AND

Their workman.

APPEARANCES :

For the Management : Mr. A. V. Vaidya, Officer, Personnel Department and Mr. A. R. Kini, Advocate.

For the Workman : Mr. J. G. Gadkari, Advocate,
2544 GI/88 —7

INDUSTRY : Banking.

STATE : Maharashtra.

Bombay, the 5th day of April, 1988

AWARD

The Central Government in exercise of powers conferred by clause (d) of sub-section 1 and sub-section 2-A of section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the employer, United Commercial Bank, Bombay in dismissing Shri V. T. Mhaskar Watchman-cum-Peon, Dadar Branch of United Commercial Bank, from service is justified? If not, to what relief the workman concerned is entitled

2. As mentioned in the showcause notice dated 20th September, 1983 the workman Shri V. T. Mhaskar was charged for the following acts of misconduct.

"1. Surreptitiously removed two cheque books from Dadar Branch, bearing nos. AS-40-112571 to 112580 and AS-40-112581 to 112590.

2. Unauthorisedly removed a cheque no. A1/40-112571 dated 26-12-1982 for Rs. 8000 presented through inward clearing by Saraswat Co-op. Bank Ltd. and received by Dadar Branch from Bombay main office, and inserted in its place another cheque bearing no. AS-40-113089 dated 29-12-1982 for Rs. 8000.

3. You had stolen the above cheque leaf no. 113089 from the cheque book to be issued to Mr. Y. N. Sharma maintaining a Savings Bank account with our bankers external counter."

3. In his reply dated 23-9-1983 the workman stated as follows :—

"I am a very poor man having large family consisting of wife, children and ailing old mother. Owing to continuous sickness and increasing expenditure on medicines I could not meet the basic requirements of my family like food and clothes. These unfortunate circumstances had upset me considerably and was not in my proper sense to understand of what I was doing. The facts mentioned in your above cited letter are nothing but a result of my psychological feelings during last year for which I now feel ashamed, and realise my fault. I really repent for what I have done.

I have already confessed before you, the acts which you have mentioned in your aforesaid letter.

You are aware of my past records. I am proud to say that I have always rendered my sincere and honest services to the institution, and assure you of my efficient and loyal services to the bank in future also.

As already mentioned earlier, I have to manage my large family with one earning. I neither have any brothers nor my father is alive. I have agreed to the fault because of my psychological effect, and in view of the fact that Bank did not suffer any loss, I earnestly request you to condone my acts and waive further proceedings in the matter."

4. During the enquiry the workman categorically admitted to have committed all the three acts of misconduct mentioned in the showcause notice-cum-chargesheet dated 20-9-83 and referred to the above quoted letter dated 23-9-1983 in which he had confessed to all the charges. He also handed over to the enquiry officer a letter dated 18-2-1984 (the date on which the enquiry was held) stating as follows :—

"I, the undersigned, Employee under disciplinary action V. R. Mhaskar respectfully submit the following for your kind and sympathetic consideration :

(1) that in reply to your Memo and suspension order dated 20-9-83 and 24-9-83. I have submitted my reply dated 23-9-83 wherein I have accepted the same and the circumstances in respect thereof were also explained in the said letter.

- (2) that in view of the above, it will be appreciated that there is no need to hold enquiry into the allegation except to consider the matter consequent to my frank admissions of the same.
- (3) that, therefore, in view of the circumstances submitted by me on 23-9-83 for which I express my unqualified regrets and having regard to the fact in my letter I respectfully request your goodselfs to sympathetically consider the position and be kind enough to allow me to work in our esteemed institution for which I shall remain grateful to you.

I further assure you that I shall diligently carry out my duties without any complaint whatsoever."

5. In view of the above quoted letter addressed to the enquiry officer the enquiry was concluded on the same day. Thereafter the enquiry officer submitted his report on 3rd March, 1984 to the Disciplinary Authority making the following recommendation :—

"Even though Bank has not suffered monetary loss the modus operandi to perpetrate the fraud on the Bank was serious. If this fraud had not been detected in the initial stage Bank perhaps would have been put to heavy losses. Such type of acts which are prima facie malicious and prejudicial to the interest of the bank should be firmly dealt with so that they may not be repeated elsewhere."

6. On receipt of the report of the enquiry officer, the disciplinary authority issued a show cause notice dated 9-4-1984 in respect of the proposed punishment. The disciplinary authority heard the workman and his representative on 16-6-1984 and passed order dismissing the workman from service, on 12th October, 1984. Being aggrieved by this order the workman preferred an appeal to the Asstt. General Manager, the appellate authority, raising several technical objections to the enquiry and praying, without prejudice to those objections, that lenient view of the matter be taken and punishment short of discharge or dismissal only be inflicted. The appellate authority heard the appeal on 7-1-1985 and rejected it vide the order dated 16th April, 1985.

7. In his statement of claim he workman did not raise the technical objections to the enquiry, which he had raised before the Enquiry Officer and the Disciplinary Authority. He did not challenge the legality and validity of the enquiry proceedings obviously because in the writing submitted by him to the Enquiry Officer he reiterated his confessional statement made in the letter dated 23-9-1983, stated that in view of his admission no enquiry be held and prayed that a lenient view of the matter be taken. He however challenged the dismissal order on the grounds that (1) the Disciplinary Authority did not take his past clear record into consideration before deciding upon the punishment, (2) that it is discriminatory and is thus violative of Art. 14 of the Constitution in as much as the Bank had taken lenient view in cases in which other employees were found guilty of equally serious misconducts, and (3) that the order will be deemed to have been set aside as the appellate authority did not hear and decide the appeal within the time limit prescribed by the Bipartite Settlement. He also contended that taking into consideration all relevant circumstances the extreme punishment of dismissal is unduly and disproportionately harsh.

8. In support of the contention that not taking into consideration the previous good record of the workman, as required by clause (c) of paragraph 19.12 of the Bipartite Settlement dated 19-10-1966, vitiates the dismissal order, reliance is sought to be placed by the workman on the decision of the Bombay High Court in the case between Borosil Glass Works Ltd and M. G. Chitale and Richard M. D'Souza (1974 11 LLJ Page 184). In that case the Industrial Tribunal had rejected the application for approval filed by the management under Section 33(2)(b) of the Industrial Disputes Act on the ground that the management did not comply with the provisions of standing order 25(6) of the Model Standing Orders which laid down that in awarding punishment under Standing Order 25 the management should take into consideration the "ity of the misconduct, the previous record if any, of the

workman and any other extenuating or aggravating circumstances that might exist. While upholding the order the Industrial Tribunal, the learned judges of the Division Bench observed as follows in para 11 of their judgement.

"The Industrial Tribunal, therefore, has to give careful consideration on the findings on which the order of discharge or dismissal or any other punishment is meted out, and there should be sufficient material to show that the punishing authority has applied his mind to the various allegations and what kind of punishment can ultimately be meted out to him. He has to show under the Standing Order 25(6) whether he has considered the previous record, if any, what is the gravity of the misconduct on which he relies, and what are the extenuating or aggravating circumstances that he has to take into consideration before passing the final order. The Standing Order 25(6) has not to be observed merely as a routine or a matter of form but careful application of mind is required to each of the relevant factors mentioned therein before coming to the conclusion, and such an application of mind must be revealed in the order itself, and much more so when it is the question of dismissal of an employee."

9. Clause (c) of paragraph 19.12 of the Bipartite Settlement of 1966 contains a provision analogous to the provision contained in clause (6) of Model Standing Order No. 25. But the contention that the past clear record of the workman was not taken into consideration by the Disciplinary Authority is not factually correct. In his final order the Disciplinary Authority has observed as follows :—

"The defence representative has without prejudice to his view set out above, further pleaded that the case should be considered on grounds of mercy. These grounds are contained in your letter dated 23-9-1983 addressed to the branch. You have stated therein that you were driven to commit the acts of misconduct to meet the heavy medical expenses of your family, that the bank has not been put to any monetary loss, and that your record of service prior to this has been good.

Unfortunately, on going through the papers what strikes one is the fact that you have committed the acts of misconduct with an intent to defraud the bank in a pre-meditated and planned manner. There is, therefore, no mitigating factor which would warrant leniency."

It is clear from these observations that the Disciplinary Authority did take into consideration the fact that the past record of the workman was good but did not attach any significance to that factor in view of the nature of the misconduct.

10. There is no substance in the contention that the dismissal order is discriminatory and thus violative of Art. 14 of the Constitution, because while others who were held guilty of equally serious misconducts were dealt with leniently, extreme punishment of dismissal is inflicted on the workman in this case. The workman has filed a chart alongwith his statement of claim, showing punishments given in seven other similar cases. The management has not disputed the correctness of the entries in the chart. But the fact that other were shown leniency while the workman was dealt with severely does not amount to discrimination because leniency is shown or denied depending on the particular circumstances of each case. Circumstances extenuating or otherwise in each case are different and one case cannot be a binding precedent in the other.

11. As mentioned above the workman had preferred an appeal to the Asstt. General Manager. The appeal was undated. The exact date on which it was filed could not be ascertained, but admittedly it was not decided within two months. It is not disputed that the appeal was filed within 45 days from the dismissal order, which was passed on 12th October, 1984. It was heard on 7-1-1985 and was decided on 16th April, 1985. It is therefore contended that as the appeal was not decided within two months, as required by paragraph 19.14 of the Bipartite Settlement, it should be deemed to have been allowed and the dismissal order deemed to have been set aside.

12. The relevant portion of paragraph 19.14 reads as follows :—

"Such appellate authority shall, if the employee concerned is so desirous, in a case of dismissal, hear him or his representative before disposing of the appeal. In cases where hearings are not required, an appeal shall be disposed of within two months from the date of receipt thereof. In cases where hearings are required to be given and are requested for, such hearings shall commence within one month from the date of receipt of the appeal and shall be disposed of within one month from the date of conclusion of such hearings. The period within which an appeal can be preferred shall be 45 days from the date on which the original order has been communicated in writing to the employee concerned."

The prescribed time schedule however is not rigid and non-observance by the management of the schedule cannot have the consequence of the appeal being allowed automatically on expiry of the time-limit.

13. There is however great force in the submission that lenient view of the matter should have been taken and punishment short of removal from service would have met the ends of justice and for various reasons this submission deserves to be accepted. Firstly the workman was driven to commit the acts complained of, by acute financial difficulties, caused, not due to any vices or by his adopting a life style which he could not afford, but because of continuous illness of members of his family. The workman frankly admitted the charges, and gave this reason for his lapse, at the earliest opportunity. Secondly no financial loss was occasioned to the Bank on account of the acts attributed to the workman. Thirdly the past record of the workman was good and unblemished, a fact never in dispute. Fourthly the Bank has taken lenient view in similar cases, and there was no special reason for not showing similar mercy to the workman in this case. No doubt the misconduct was of serious nature but there are several good reasons and extenuating circumstances to justify a lenient view of the matter. I am satisfied that the order of dismissal was not justified nor will be an order of discharge or removal from service.

14. The order of dismissal passed against the workman is set aside, and the workman is directed to be reinstated in service forthwith, with full backwages from the date of reference, the period from the date of dismissal till the date of reference to be treated as extra ordinary leave without pay. The punishment of dismissal is substituted by stoppage of one increment permanently.

M. S. JAMADAR, Presiding Officer.
[No. L-12012/57/87-D. III(A)/D. II(A)]
P. V. SREEDHARAN, Desk Officer.

नई दिल्ली, 6 अक्टूबर, 1988

का. आ. 3152.—औद्योगिक नियोजन (स्थायी आदेश) अधिनियम, 1946 (1946 का 20) की धारा 13-क द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के श्रम एवं नियोजन मंत्रालय की अधिसूचना सं. का. आ. 2738 दिनांक 4 नवम्बर, 1960 का आशिक अधिष्ठापन करते हुए, केन्द्रीय सरकार, भारत सरकार के श्रम, नियोजन एवं पुनर्वासि मंत्रालय की अधिसूचना सं. का. आ. 1970 दिनांक 28 मई, 1968 द्वारा औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7 के अधीन गठित श्रम न्यायालय संख्या 2, बंबई को उक्त औद्योगिक नियोजन (स्थायी आदेश अधिनियम, 1946 के अधीन प्रमाणित किसी स्थायी आदेश के अनुप्रयोग या निर्वहन के रूप में किसी प्रश्न के संबंध में महाराष्ट्र राज्य के किसी नियोजक या कर्मकार द्वारा किए गए किसी हवाले में

उत्पन्न किसी कार्यवाही के निपटान के लिए, किसी औद्योगिक स्थापना के संबंध में, जिसके लिए केन्द्रीय सरकार समुचित सरकार है, श्रम न्यायालय के रूप में विनिश्चित करती है।

[का. सं. ए. 12016/4/88 समन्वय]

इन्द्र सिंह, अवर सचिव

New Delhi, the 6th October, 1988

S.O. 3152.—In exercise of the powers conferred by section 13-A of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), and in partial supersession of the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 2738, dated the 4th November, 1960, the Central Government hereby specifies the Labour Court No. 2 at Bombay, constituted under section 7 of the Industrial Disputes Act, 1947 (14 of 1947), by the notification of the Government of India in the Ministry of Labour, Employment & Rehabilitation No. S.O. 1970 dated the 28th May, 1968, as the Labour Court, for the disposal of any proceeding arising out of any reference made by any employer or workman in the State of Maharashtra relating to any question as to the application or interpretation of a Standing Order certified under the said Industrial Employment (Standing Orders) Act, 1946, in relation to an industrial establishment in respect of which the Central Government is the appropriate Government.

[F. No. S-12016/4/88-Coord.]

INDER SINGH, Under Secy.

नई दिल्ली, 7 अक्टूबर, 1988

का. आ. 3153.—उत्प्रवास अधिनियम 1983 (1983 का 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उत्प्रवास संरक्षी कार्यालय दिल्ली में श्री मंगल सेन टांगरी अवर सचिव श्रम, मंत्रालय को दिनांक 7 अक्टूबर 1988 को उत्प्रवास संरक्षी दिल्ली के सभी कार्य करने के लिए प्राधिकृत करती है।

[सं. ए-22012(1)/86 उत्प्र. 2]

अश्विनी कुमार लुथरा, निदेशक

New Delhi, the 7th October, 1988

S.O. 3153.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri M. S. Tangry, Under Secretary in the Ministry of Labour, to perform all functions of Protector of Emigrants, Delhi on 7-10-1988.

[No. A-22012(1)/86-Emig. II]

A. K. LUTHRA, Director

